

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ROSE HILLS,) CIVIL ACTION NO:
Plaintiff,) 6:18-cv-00301-
) ADA-JCM
VS.)
) JURY TRIAL
SAM'S EAST, INC., SAM'S CLUB,) REQUESTED
AND WAL-MART, INC., formally)
known as WAL-MART STORES,)
INC.,)
Defendants.)

25

<div>Page 2</div> <div>1 A P P E A R A N C E S:</div> <div>2</div> <div>3</div> <div>4 FOR THE PLAINTIFF:</div> <div>5 THE CARLSON LAW FIRM</div> <div>6 BY: JULIE PESCHEL, ESQUIRE</div> <div>7 2010 SW HK Dodgen Loop</div> <div>8 Suite 201</div> <div>9 Temple, Texas 76504</div> <div>10 254-771-5688</div> <div>11</div> <div>12</div> <div>13 FOR THE DEFENDANTS:</div> <div>14 WALTERS, BALIDO AND CRAIN, LLP</div> <div>15 BY: BRETT PAYNE, ESQUIRE</div> <div>16 9020 N. Capital of Texas Highway</div> <div>17 Building II, Suite 225</div> <div>18 Austin, Texas 78759</div> <div>19 512-472-9000</div> <div>20</div> <div>21</div> <div>22 Videographer: Joe Bazan</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>1 E X H I B I T S</div> <div>2</div> <div>3 PAGE</div> <div>4 Exhibit 1 CD - Dr. HMG's Files 12</div> <div>5</div> <div>6 Exhibit 2 11/25/2016 Cervical Spine 50</div> <div>7 MRI Record</div> <div>8</div> <div>9 Exhibit 3 The Legal Connection, Inc. 52</div> <div>10 Documents</div> <div>11</div> <div>12 Exhibit 4 GoodRX Website Forms 54</div> <div>13</div> <div>14 Exhibit 5 Fairhealth Form 71</div> <div>15</div> <div>16 Exhibit 6 Accuracy of Information Form 71</div> <div>17</div> <div>18 Exhibit 7 Baylor Scott & White Records 84</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>Page 3</div> <div>1 I N D E X</div> <div>2</div> <div>3</div> <div>4 EXAMINATION OF HECTOR MIRANDA-GRAJALES, M.D. PAGE</div> <div>5</div> <div>6 Mr. Payne.....5,91</div> <div>7 Ms. Peschel.....78,98</div> <div>8 Witness Signature Page.....100</div> <div>9 Court Reporter's Certification Pg.....103</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1 - - -</div> <div>2 THE VIDEOGRAPHER: We are on the</div> <div>3 record for the videotape deposition of</div> <div>4 Dr. Hector Miranda-Grajales taken on</div> <div>5 Thursday, January 16, 2020. The time is</div> <div>6 3:18 p.m.</div> <div>7 Will the court reporter please</div> <div>8 swear in the witness?</div> <div>9 - - -</div> <div>10 HECTOR MIRANDA-GRAJALES, M.D. was</div> <div>11 called as a witness, and after having</div> <div>12 been duly sworn to tell the truth,</div> <div>13 testified as follows:</div> <div>14 (Witness sworn)</div> <div>15 - - -</div> <div>16 DIRECT EXAMINATION</div> <div>17 - - -</div> <div>18 BY MR. PAYNE:</div> <div>19 Q. Doctor, could you please state your full</div> <div>20 name for the video record?</div> <div>21 A. Hector Miranda-Grajales, but I go by</div> <div>22 Dr. Miranda.</div> <div>23 Q. And, Doctor, you -- well, what is your</div> <div>24 occupation?</div> <div>25 A. I'm a physical medicine -- I'm a doctor, and</div>

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<p>1 I practice in pain medicine, and physical medicine, 2 and rehabilitation. 3 Q. And so that Ms. Peschel doesn't have to do 4 it later, let me ask you to go through your 5 training and educational background. 6 A. Yes. So I went to Medical School at the 7 University of Puerto Rico School of Medicine four 8 years, and I did an internship at the VA San Juan 9 Medical Center in internal medicine. Then I did a 10 three-year program in physical medicine and 11 rehabilitation at the University of Miami. Then I 12 did a one-year fellowship in pain medicine in New 13 York at Beth Israel Medical Center. 14 Q. In what do you consider yourself to be an 15 expert in as far as offering testimony? 16 A. Physical medicine rehabilitation, pain 17 medicine, brain injury medicine, and life care 18 planning. 19 Q. All right. You do not consider yourself to 20 have expertise or be an expert who can testify as 21 to radiology issues; is that accurate? 22 A. I can. 23 Q. But do you consider yourself to be an 24 expert? 25 A. It depends on the situation. Yes.</p>	<p>1 Q. All right. Okay. And you feel comfortable 2 offering opinions about headache treatment from 3 your background and physical medicine and pain 4 management, but not in neurology; is that 5 accurate? 6 A. It's accurate to the sense that I'm not a 7 neurologist. I didn't complete a residency in 8 neurology. But again, one of my board 9 certifications is in brain injury of medicine, and 10 part of the brain injury is having posttraumatic 11 headaches. 12 Q. All right. Doctor, to the extent that my 13 questions call for an expert opinion, a medical 14 expert opinion, would you give me that opinion 15 based on a reasonable degree of medical 16 probability? 17 A. Yes, sir. 18 Q. If you cannot answer a question and are not 19 comfortable answering a question based on a 20 reasonable degree of medical probability, will you 21 let us know? 22 A. Yes, sir. 23 Q. All right. And if you feel that a topic or 24 a question is outside of your area of expertise, 25 will you likewise let us know?</p>
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<p>1 Q. Would you defer to a radiologist if your 2 opinion was different than a radiologist? 3 A. It's possible. 4 Q. All right. What about orthopedics? Do you 5 consider yourself to be an expert in orthopedics? 6 A. Orthopedics is a board term. So I am an 7 expert in certain regards of orthopedic profession, 8 but I'm not a surgeon, you know. 9 Q. Where or in what parts do you consider 10 yourself to have expertise in orthopedics? 11 A. The musculoskeletal system, including the 12 spine. 13 Q. All right. And I guess to use your 14 qualifications, you do not consider yourself to be 15 an expert in orthopedic surgery; true? 16 A. Correct. 17 Q. Would it also be true that you do not 18 consider yourself to be an expert in neurology? 19 A. I'm not a neurologist. That's correct. 20 Q. And so, you would agree you would not feel 21 comfortable offering an opinion, an expert opinion, 22 on neurology; is that accurate? 23 A. It depends, because I do treat headaches, 24 and I know this case involves headaches. So I feel 25 comfortable, you know, treating headaches.</p>	<p>1 A. Yes, sir. 2 Q. In this instance, you were hired by Ms. Rose 3 Hills' attorneys to prepare a life care plan; is 4 that true? 5 A. Yes, sir. 6 Q. You do not consider yourself to be a 7 treating physician of Ms. Hills. Accurate? 8 A. Correct. 9 Q. All right. You have never provided any 10 treatment to Ms. Hills; true? 11 A. True. 12 Q. Did you have an in-person meeting with 13 Ms. Hills? 14 A. Yes, sir. 15 Q. When did that occur? 16 A. Let me open up my report here. 17 Q. Of course. 18 A. I evaluated Ms. Hills on July 11, 2019. 19 Q. All right. So about six months ago? 20 A. Just about. Yeah. 21 Q. Okay. And what was the nature of your visit 22 with Ms. Hills on that occasion last July? 23 A. It was for a history interview, and physical 24 examination in relation to a life care plan. 25 Q. How long did that examination last?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I'm going to guess about an hour.</p> <p>2 Q. What did it entail?</p> <p>3 A. History and physical exam.</p> <p>4 Q. Did it involve anything beyond a history and</p> <p>5 a physical examination?</p> <p>6 A. No, sir.</p> <p>7 Q. You did not perform or have performed any</p> <p>8 type of radiology testing; true?</p> <p>9 A. True.</p> <p>10 Q. You did not perform or have performed any</p> <p>11 type of nerve conduction testing or anything of</p> <p>12 that nature; correct?</p> <p>13 A. Correct.</p> <p>14 Q. There would be no other testing that would</p> <p>15 have been performed in connection with your visit</p> <p>16 on July of 2019; true?</p> <p>17 A. True.</p> <p>18 Q. It would have simply been a standard</p> <p>19 physical examination, as well as a conduction of</p> <p>20 her history; true?</p> <p>21 A. True.</p> <p>22 Q. And that was done at the request of</p> <p>23 Ms. Hills' legal counsel in this litigation matter;</p> <p>24 true?</p> <p>25 A. True.</p>	<p style="text-align: right;">Page 12</p> <p>1 entire file pertaining to this litigation?</p> <p>2 A. Yes, sir.</p> <p>3 Q. All right.</p> <p>4 MR. PAYNE: And, again, I marked</p> <p>5 that CD, or at least the envelope of the</p> <p>6 CD, as Exhibit Number 1.</p> <p>7 (Exhibit No. 1 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. PAYNE:</p> <p>10 Q. Of course, I only took a few minutes because</p> <p>11 we were running a little late to begin with, but I</p> <p>12 didn't see any correspondences exchange between you</p> <p>13 and The Carlson Law Firm. Does such correspondence</p> <p>14 exist?</p> <p>15 A. Yes, but it wasn't requested in the Duces</p> <p>16 Tecum.</p> <p>17 Q. Okay. You don't consider that part of your</p> <p>18 file?</p> <p>19 A. It wasn't requested, so, no.</p> <p>20 Q. Okay. The request -- and I'll read it to</p> <p>21 you. Exhibit A, Duces Tecum number one, the</p> <p>22 witness' entire file pertaining to this litigation.</p> <p>23 You do not consider correspondences from the</p> <p>24 attorneys who hired you to be pertinent to this</p> <p>25 litigation?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Just so the jury is not confused. It was</p> <p>2 not at the request of the Court; true?</p> <p>3 A. True.</p> <p>4 Q. It was not at the request of me, defense</p> <p>5 counsel; true?</p> <p>6 A. True.</p> <p>7 Q. It was at the request of the attorneys</p> <p>8 representing her in her personal injury litigation;</p> <p>9 true?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Was Ms. Hills cooperative in</p> <p>12 your examination?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And as a result of the examination, you did</p> <p>15 in fact prepare a life care plan; is that true?</p> <p>16 A. Correct.</p> <p>17 Q. And I believe you have produced that, along</p> <p>18 with -- what I understand to be your complete file</p> <p>19 on a CD form, which I've briefly been able to</p> <p>20 produce through the courtesy of Ms. Peschel, who</p> <p>21 has a CD player.</p> <p>22 MR. PAYNE: And this CD that I'll</p> <p>23 now mark as Exhibit Number 1.</p> <p>24 BY MR. PAYNE:</p> <p>25 Q. Is that your response to my request for your</p>	<p style="text-align: right;">Page 13</p> <p>1 A. It might be. But again, when I do produce</p> <p>2 e-mail correspondences, it's because specifically</p> <p>3 stated in the Duces Tecum. I didn't see it there.</p> <p>4 Q. Okay. But you may or may not consider it</p> <p>5 part of your entire file, but you did not produce</p> <p>6 it here today; true?</p> <p>7 A. I didn't bring either correspondences.</p> <p>8 Correct.</p> <p>9 Q. Do you have e-mails -- well, let me ask it</p> <p>10 two different ways. Do you have e-mail</p> <p>11 correspondences from The Carlson Law Firm?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you have written correspondences received</p> <p>14 by regular mail or by fax from The Carlson Law</p> <p>15 Firm?</p> <p>16 A. Not that I recall regarding this case.</p> <p>17 Q. Okay. There had been other occasions where</p> <p>18 The Carlson Law Firm has retained you to prepare a</p> <p>19 life care plan on behalf of one of their clients;</p> <p>20 true?</p> <p>21 A. True.</p> <p>22 Q. Okay. On how many occasions has The Carlson</p> <p>23 Firm retained you for that purpose?</p> <p>24 A. I'm going to guess about 20 or less.</p> <p>25 Q. I'm sorry?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Twenty or less.</p> <p>2 Q. Okay. All right. While I am on this, let</p> <p>3 me just go through it. The second item I requested</p> <p>4 for you to bring here today is all written or other</p> <p>5 documentation concerning reflecting factual</p> <p>6 observations test supporting data, calculations,</p> <p>7 and opinions of you including your reports.</p> <p>8 Have you provided that information to</p> <p>9 me?</p> <p>10 A. Yes. That's in the CD.</p> <p>11 Q. Okay. And that consists of the life care</p> <p>12 plan; true?</p> <p>13 A. True.</p> <p>14 Q. All right. There are no other tests,</p> <p>15 supporting data, calculations, or opinions that you</p> <p>16 have made, or obtained, or created in this case</p> <p>17 that are not present on that CD; is that accurate?</p> <p>18 A. Accurate.</p> <p>19 Q. Number three on the Duces Tecum I request</p> <p>20 all writings or other documentation used in forming</p> <p>21 the basis of your opinions. Are there any such</p> <p>22 writings?</p> <p>23 A. Like literature review? No, sir.</p> <p>24 Q. Okay. So in this instance, you did not rely</p> <p>25 on any documentation or writings as a basis for</p>	<p style="text-align: right;">Page 16</p> <p>1 anything like that?</p> <p>2 A. I don't anticipate any. No.</p> <p>3 Q. All right. I did see in my brief look at</p> <p>4 what was on the CD that you were provided with some</p> <p>5 medical records; is that true?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And did you review those medical records in</p> <p>8 preparation of your life care plan?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And I think your life care plan does contain</p> <p>11 a record Summary, does it not? On page five?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then the Summary continues on to the top</p> <p>14 of page seven; true?</p> <p>15 A. True.</p> <p>16 Q. All right. And so, your report itself</p> <p>17 consists of the initial phase -- well, there is a</p> <p>18 cover page, page two is an introduction, and then</p> <p>19 the bottom part of page -- pardon me -- of page</p> <p>20 three references the IME.</p> <p>21 And I do not see on the IME, page three</p> <p>22 of 12, any particular notations about the results</p> <p>23 of your physical examination. Are they located</p> <p>24 anywhere else in your report?</p> <p>25 A. Yes. The physical examination starts in</p>
<p style="text-align: right;">Page 15</p> <p>1 forming your opinions other than anything contained</p> <p>2 on that CD; true?</p> <p>3 A. True.</p> <p>4 Q. Did you bring your CV here today?</p> <p>5 A. It's in the CD.</p> <p>6 Q. All right. Did you bring a list of your</p> <p>7 writings, speeches, and publications?</p> <p>8 A. No, sir. There's a mention of one of the</p> <p>9 publications that I was involved in in the CD, or</p> <p>10 it should be.</p> <p>11 Q. All right. And then number six is similar,</p> <p>12 I guess, to number two or three. All documents,</p> <p>13 reports, letters, studies, and statistical data of</p> <p>14 compilations that will be to substantial your</p> <p>15 opinions. Are there any documents, reports,</p> <p>16 letters, data that support your opinions that are</p> <p>17 not on that CD and in your life care plan?</p> <p>18 A. No, sir.</p> <p>19 Q. Item number seven is calculations, formulas,</p> <p>20 and equations to support your opinion. Is there</p> <p>21 anything that you utilized that's not on that CD?</p> <p>22 A. No, sir.</p> <p>23 Q. Finally, number eight is a display of</p> <p>24 exhibits that you intend to use at the trial of</p> <p>25 this case. Do you intend to use any visuals or</p>	<p style="text-align: right;">Page 17</p> <p>1 page six of 12 until seven of 12.</p> <p>2 Q. Okay. All right. And on page four of your</p> <p>3 report, there's a section entitled Questionnaire.</p> <p>4 And I assume this is, in part, or maybe in its</p> <p>5 entirety the history that Ms. Hills provided to</p> <p>6 you; is that true?</p> <p>7 A. The request was part of it. Also, the</p> <p>8 Summary section page five of 12 includes part of</p> <p>9 the interview that I had with her.</p> <p>10 Q. And you -- she reported to you that she had</p> <p>11 been involved in a motor vehicle accident in 1999?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And she had been involved in another</p> <p>14 accident in either 2000 or 2001?</p> <p>15 A. Yes.</p> <p>16 Q. For which she received or was taken to the</p> <p>17 hospital?</p> <p>18 A. Yes.</p> <p>19 Q. And for which she had reported to you lower</p> <p>20 back pain, right hip pain for which she received</p> <p>21 chiropractic care; is that true?</p> <p>22 A. Yes.</p> <p>23 Q. And then in 2002, she reported to you that</p> <p>24 she had -- was assaulted and punched in the nose,</p> <p>25 and went to the emergency room?</p>

<p style="text-align: right;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. But that she did not have aggravating</p> <p>3 headaches, neck pain, or back pain as a result?</p> <p>4 A. Correct.</p> <p>5 Q. She also reported to you that she did have a</p> <p>6 prior history of migraine headaches; is that true?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When did she tell you those first started?</p> <p>9 And I'll refer you to the top of page six, I think.</p> <p>10 A. She said since her mid 20s.</p> <p>11 Q. And how old of a lady is she now?</p> <p>12 A. She was 37 when I saw her.</p> <p>13 Q. So she had been having headaches for at</p> <p>14 least a decade before the event at the Sam's Club,</p> <p>15 according to her own history; is that true?</p> <p>16 A. Yes.</p> <p>17 Q. Now, your record notes that the headaches</p> <p>18 preceding the event at Sam's were not nearly as</p> <p>19 frequent or severe as they were following the event</p> <p>20 at Sam's. Do you see where that is written in that</p> <p>21 same area? At the top of page six?</p> <p>22 A. Hold on. True. True. Yeah. Yeah. I see</p> <p>23 it.</p> <p>24 Q. So -- but the inclusion of that statement</p> <p>25 that the headaches before this event as opposed to</p>	<p style="text-align: right;">Page 20</p> <p>1 have her prior records?</p> <p>2 A. I had her records. Yeah.</p> <p>3 Q. Did you have records predating the October</p> <p>4 event? October 2016?</p> <p>5 A. No.</p> <p>6 Q. So you didn't have her prior records?</p> <p>7 A. I had her -- I mean, prior obviously to my</p> <p>8 evaluation, but not prior to the accident.</p> <p>9 Q. And perhaps I should be more precise. You</p> <p>10 were not provided and as we sit here today, you</p> <p>11 have not reviewed Ms. Hills' medical records that</p> <p>12 predate the event the Sam's; true?</p> <p>13 A. True.</p> <p>14 Q. And so kind of back to my other question.</p> <p>15 As to the severity and frequency of her prior</p> <p>16 migraine headaches, you have no independent way of</p> <p>17 knowing that; true?</p> <p>18 A. Other than what she said. Correct.</p> <p>19 Q. Other than what the plaintiff in this</p> <p>20 lawsuit has told you, you have no way of knowing</p> <p>21 her history of migraines that predate the event at</p> <p>22 Sam's; true?</p> <p>23 A. To the extent that I didn't review records</p> <p>24 showing that. Correct. And then prior to the</p> <p>25 fall.</p>
<p style="text-align: right;">Page 19</p> <p>1 after this event, that is written in there as part</p> <p>2 of her history, that is what she told you; true?</p> <p>3 A. True.</p> <p>4 Q. That statement is not written in there based</p> <p>5 on your independent review of her medical records;</p> <p>6 true?</p> <p>7 A. True.</p> <p>8 Q. As to any kind of -- well, you are not</p> <p>9 offering a medical opinion that her headaches were</p> <p>10 more severe following this event as opposed to</p> <p>11 prior to this event on anything other than what she</p> <p>12 told you; true?</p> <p>13 A. And the medical records.</p> <p>14 Q. Well, but did you do an independent review</p> <p>15 of her medical records?</p> <p>16 A. I reviewed her records. Yeah.</p> <p>17 Q. And you saw where there were numerous</p> <p>18 reports of a history of migraine headaches</p> <p>19 preceding the event at Sam's; true?</p> <p>20 A. She did have a -- she reported headaches.</p> <p>21 But the ones that I'm referring to were the ones</p> <p>22 described as posttraumatic headaches from her</p> <p>23 neurologist.</p> <p>24 Q. Well, let me ask it this way: Did your</p> <p>25 independent review of Ms. Hills -- well, did you</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. And so, back to my question then.</p> <p>2 Other than what she told you, you have no basis for</p> <p>3 any -- well, are you offering an opinion that her</p> <p>4 headaches were worse after the event at Sam's?</p> <p>5 A. Yes.</p> <p>6 Q. And that's based on what she told you?</p> <p>7 A. And the medical records showing that she has</p> <p>8 a new kind of headache, a posttraumatic headache.</p> <p>9 Q. Well -- but you don't know what was going on</p> <p>10 before; right?</p> <p>11 A. Headaches. I mean --</p> <p>12 MS. PESCHEL: Objection to form.</p> <p>13 BY MR. PAYNE:</p> <p>14 Q. But migraine headaches?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. I mean, I didn't -- I'm not sure if I</p> <p>17 brought her prior records. But I'll represent to</p> <p>18 you, her prior records do reference migraine</p> <p>19 headaches within the few years leading up the event</p> <p>20 at Sam's.</p> <p>21 Do you have any reason to disagree with</p> <p>22 that?</p> <p>23 MS. PESCHEL: I'm going to object</p> <p>24 to the form of the question, because I</p> <p>25 have the records here, and I don't want</p>

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<p>1 the witness to be misled because when I 2 looked at them, I didn't see anything 3 where she's complaining of migraines in 4 any of those prior records. 5 MR. PAYNE: Okay. Well -- 6 MS. PESCHEL: Only on the History 7 section, like, in her current records, 8 if that makes sense. Like, there's a 9 medical history of the patient. 10 MR. PAYNE: That says history of 11 migraine headaches. 12 MS. PESCHEL: But there's no 13 treatment. 14 MR. PAYNE: Okay. Well, there is 15 treatment in her prior records; right? 16 You agree with that? 17 MS. PESCHEL: For migraines? For 18 migraines? 19 MR. PAYNE: Yes. 20 MS. PESCHEL: I did not see any 21 treatment for migraines. 22 MR. PAYNE: Okay. You didn't see 23 at least three references to migraine 24 headaches predating this accident? 25 MS. PESCHEL: I saw her go in with</p>	<p>1 A. True. 2 Q. And you're not -- you have not reviewed any 3 objective testing that shows any way -- well, have 4 you observed any objective testing that supports 5 her complaints of migraine headaches? 6 A. Short answer is no. I mean, migraine 7 headaches for the most part -- there's, you know, 8 it's a subjective complaint. You know, a brain MRI 9 will not tell you somebody -- it depends; right? 10 Some MRI showings can show you -- point a 11 differential diagnosis of a headache; right? But, 12 you know, it's not 100 percent specific for that. 13 Q. Let's talk a little bit about that. You 14 characterized a migraine as a subjective complaint. 15 Can you explain to the ladies and gentlemen of the 16 jury what you mean by subjective? 17 A. Subjective means something that the patient 18 is telling you. 19 Q. And versus -- what does objective mean? 20 A. Objective is something that you can measure. 21 Q. And -- 22 A. Or, you know, independently verify 23 basically. 24 Q. Okay. Yeah. So in this instance, and in 25 most instances unless you see some lesion, or, you</p>
Page 23	Page 25
<p>1 complaints of headaches and have 2 sinusitis I had her go in, and complain 3 of headaches, and diarrhea, and they 4 said it was a viral infection. 5 Can we go off the record and 6 give the prior records to the doctor? 7 MR. PAYNE: Well, no. We are here 8 to discuss what his opinions are today; 9 okay? 10 BY MR. PAYNE: 11 Q. You have not reviewed her prior records; 12 right? 13 A. Prior to the fall. Correct. 14 Q. Yeah. You don't know what she reported to 15 her doctors about migraines or not migraines based 16 on anything other than what she told you; right? 17 A. True. 18 Q. She told you they were more severe after the 19 event at Sam's, but you have no way of 20 independently verifying that based on what you've 21 received up to today; true? 22 A. True. 23 Q. But even she told you that she had at least 24 a decade-long history of headaches before any event 25 at Sam's; true?</p>	<p>1 know, something pretty traumatic, or important, or 2 significant, you're not typically going to find an 3 objective independent verification of a migraine 4 headache; correct? 5 A. For the most part. Correct. 6 Q. All right. And so, you have to rely on the 7 patient to tell you that they're having a migraine 8 headache; right? 9 A. Right. 10 Q. And so, any diagnosis of a migraine 11 headache, in this instance, is based only on what 12 Ms. Hills has told you and told her other medical 13 providers; true? 14 A. True. 15 Q. All right. So we have to rely on Ms. Hills' 16 subjective complaints to support a diagnosis a 17 migraine headaches; true? 18 A. True. 19 Q. And if she is mistaken or otherwise wrong, 20 then that diagnosis cannot be supported; true? 21 MS. PESCHEL: Form. 22 THE WITNESS: If she is mistaken as 23 to what? 24 BY MR. PAYNE: 25 Q. As to whether she is actually having a</p>

<p style="text-align: right;">Page 26</p> <p>1 migraine headache.</p> <p>2 A. I mean, in the event that she's not being</p> <p>3 truthful about her symptoms, you know, that would</p> <p>4 be a problem.</p> <p>5 Q. Right. It would be a problem -- you cannot</p> <p>6 offer an accurate diagnosis if someone is not</p> <p>7 accurate about their symptoms?</p> <p>8 A. True.</p> <p>9 Q. And if someone says that their symptoms are</p> <p>10 worse after a particular event, you have no way of</p> <p>11 independently varying that; true?</p> <p>12 A. In this case, it would be tough. I mean, I</p> <p>13 would rely on her verbalization of her symptoms.</p> <p>14 Right.</p> <p>15 Q. Well, and did you review her emergency room</p> <p>16 records?</p> <p>17 A. From the date of the accident? I have</p> <p>18 Baylor, Scott & White notes.</p> <p>19 Q. Okay.</p> <p>20 A. Here.</p> <p>21 Q. And did you have an opportunity to review</p> <p>22 those?</p> <p>23 A. Yes. I reviewed those records.</p> <p>24 Q. Okay. And according to the history of</p> <p>25 present illness, what was her primary complaint on</p>	<p style="text-align: right;">Page 28</p> <p>1 Room?</p> <p>2 A. Okay. I'm looking at the document Bate</p> <p>3 Stamped at the bottom, PLTF00029. Okay. It says</p> <p>4 here, chief complaints patient presents with</p> <p>5 shoulder pain.</p> <p>6 Q. Okay. And do you see on there where she</p> <p>7 denied hitting her head?</p> <p>8 A. Yes.</p> <p>9 Q. Do you see where she denied losing</p> <p>10 consciousness?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see where she denied hitting her</p> <p>13 shoulder or neck directly?</p> <p>14 A. Yes.</p> <p>15 Q. Then it is noted that she had small</p> <p>16 abrasions on her foot and ankle. Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. And so, do you see anything in the emergency</p> <p>19 room record referencing a blow to the head or any</p> <p>20 reference to headaches?</p> <p>21 A. It says here, a few hours later she reports</p> <p>22 bilateral neck stiffness and muscle soreness. And</p> <p>23 there's a history here (witness indicating) of</p> <p>24 migraine headaches.</p> <p>25 Q. A history of migraine headaches; right?</p>
<p style="text-align: right;">Page 27</p> <p>1 the date of this event at the Sam's Club? Was it</p> <p>2 shoulder pain?</p> <p>3 A. I got to find that document.</p> <p>4 Q. All right.</p> <p>5 A. Hold on. If you have it there, and you want</p> <p>6 to provide it, it'll make it faster.</p> <p>7 Q. You know, and again, unfortunately I only</p> <p>8 brought my summary.</p> <p>9 A. Okay.</p> <p>10 Q. I did not bring -- well, I may actually have</p> <p>11 brought the ER record. Let me see.</p> <p>12 A. Okay.</p> <p>13 Q. No, I don't. It's October 13, 2016 from</p> <p>14 Baylor Scott & White.</p> <p>15 A. The date of the accident you're talking</p> <p>16 about; right?</p> <p>17 Q. Yes. And the date of that record. And I</p> <p>18 think buy Baylor Scott & White goes backward if</p> <p>19 that's -- you know what I mean?</p> <p>20 A. Let me try to find it. Hold on. I need to</p> <p>21 be sure. October 13, 2016; correct?</p> <p>22 Q. Yes, sir.</p> <p>23 A. Yeah. And your question was?</p> <p>24 Q. What was her primary complaint when she</p> <p>25 appeared at the Baylor Scott & White Emergency</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yeah.</p> <p>2 Q. But no report of a -- no current complaint</p> <p>3 of headaches; true?</p> <p>4 A. Let me double-check here. Almost done</p> <p>5 here.</p> <p>6 Q. Sure.</p> <p>7 A. Yes. You're correct about that.</p> <p>8 Q. And just so we are clear: You've now had</p> <p>9 the opportunity to review the emergency room</p> <p>10 record. The primary complaint is shoulder pain;</p> <p>11 true?</p> <p>12 A. True.</p> <p>13 Q. She denies hitting her head or losing</p> <p>14 consciousness; correct?</p> <p>15 A. Correct.</p> <p>16 Q. She denies hitting her shoulder or neck</p> <p>17 directly; correct?</p> <p>18 A. True.</p> <p>19 Q. And there -- she does tell the folks at the</p> <p>20 emergency room about her history of migraine</p> <p>21 headaches; true?</p> <p>22 A. True.</p> <p>23 Q. But she is not reporting any new headaches</p> <p>24 on the date of the accident; correct?</p> <p>25 A. Correct.</p>

<p>Page 30</p> <p>1 Q. And then, if you can turn to October 17, 2 which I think is her next visit to Baylor Scott & 3 White. 4 A. I'm here (witness indicating). 5 Q. And do you see where she specifically denies 6 headaches in that record? 7 A. Hold on. I see it. 8 Q. All right. And it also reports that her 9 neck has no midline or bony tenderness with a good 10 range of motion. Do you see that? 11 A. In the Physical exam section? 12 Q. I'm not sure where. I think so. 13 A. Let me see. I see in review of symptoms, 14 positive for arthrology as in neck pain, but you're 15 saying limitation of range of motion? 16 Q. Again, and I apologize for not bringing that 17 record today. I'm just -- my Summary reflects good 18 ROM next to neck or denial of neck tenderness. 19 A. I see it. 20 Q. Okay. And they -- 21 A. However -- I'm sorry to interrupt. It says 22 she exhibits spasms in her neck. 23 Q. Okay. And they did an x-ray on her left 24 wrist; correct? 25 A. Yes, sir.</p>	<p>Page 32</p> <p>1 anything like that; true? 2 A. True. 3 Q. And no loss of consciousness; correct? 4 A. Correct. 5 Q. And no films made of the head? Any type of 6 x-ray, or MRI, or CT scan; true? 7 A. True. 8 Q. All right. You reference in the History and 9 Summary posttraumatic headaches. Why -- what is 10 the basis of your characterization of her headaches 11 as being posttraumatic? 12 A. Partly it's her treating neurologist 13 categorized it as that. But independently, it is a 14 posttraumatic headache because may not immediately 15 after the fall, but progressively thereafter she 16 did develop headaches after that fall. 17 Q. Well, let me ask you this: We -- based on 18 our own medical records that you have looked at, 19 she's got a history of migraines; right? 20 A. Yes. 21 Q. She has no blow to the head on the date of 22 the accident; right? 23 A. Right. 24 Q. No subjective complaints of headaches on the 25 date of the accident; right?</p>
<p>Page 31</p> <p>1 Q. And that appears to be her primary complaint 2 that day; true? 3 A. And -- 4 MS. PESCHEL: Objection. 5 THE WITNESS: And neck pain. Yeah. 6 BY MR. PAYNE: 7 Q. But they don't x-ray, they don't MRI, they 8 don't do anything in terms of tests or films of her 9 neck on that day; true? 10 A. Correct. 11 Q. And they certainly don't do anything with 12 respect to her head in terms of testing; true? 13 A. Correct. 14 Q. Now, those records on the date of the 15 accident and a few days following the accident, are 16 those consistent or inconsistent with an 17 aggravation of her migraine complaints? 18 A. The question is did the records that we just 19 talked about, are they consistent with -- 20 Q. Or inconsistent with a -- some type of 21 aggravation of her issue with migraines? 22 A. So she didn't develop any worsening 23 headaches or migraine headaches after -- 24 immediately after the fall. 25 Q. And there was no blow to the head or</p>	<p>Page 33</p> <p>1 A. True. Well, she did have neck pain in that 2 one. 3 Q. Okay. 4 A. Sometimes that can take time before it 5 starts. 6 Q. Well, I understand. But no migraine 7 headaches are reported either on the accident, or 8 three or four days later; right? 9 A. Not immediately after the accident. 10 Correct. 11 Q. All right. And so, I understand you're 12 saying that a neurologist characterized them as 13 posttraumatic headaches, but I'm asking you. Do 14 you have an independent basis of -- an opinion, if 15 you're offering that opinion, that her headaches 16 are posttraumatic as opposed to these ongoing 17 issues she has with migraines? 18 A. Posttraumatic. That's my opinion. 19 Q. Based on what? What are you basing that on? 20 A. Well, the fall. Again, it doesn't have to 21 happen immediately after the injury. However, the 22 course of -- and again, as we established, I don't 23 have her prior records before the fall. 24 But according to her history and the 25 nature of her condition dramatically changed after</p>

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<p>1 that fall. So that's why I'm attributing the</p> <p>2 diagnosis of posttraumatic headache to the fall.</p> <p>3 Q. Okay. Based on what she said happened?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay.</p> <p>6 A. And again, the medical records and the</p> <p>7 change of her pathology afterwards.</p> <p>8 Q. But again, headaches are what she says;</p> <p>9 right?</p> <p>10 A. She has headaches. Yeah.</p> <p>11 Q. Okay. Ms. Hills; reported to you, she</p> <p>12 reported to her neurologist, she did not report to</p> <p>13 the ER physicians, but reported to those folks that</p> <p>14 her headaches became worse after this fall; true?</p> <p>15 A. Hmm-hmm. Yeah.</p> <p>16 Q. And nothing else supports her headaches</p> <p>17 becoming worse after this fall other than her</p> <p>18 saying that to her healthcare providers; true?</p> <p>19 A. True.</p> <p>20 MS. PESCHEL: Objection to form.</p> <p>21 THE WITNESS: Right.</p> <p>22 BY MR. PAYNE:</p> <p>23 Q. And so, the sole basis that you're relying</p> <p>24 on from your review of the records, the neurologist</p> <p>25 is relying on is what Ms. Hills said happened as</p>	<p>1 C5-6, C7-T1, and T1, and T2.</p> <p>2 Q. And have you reviewed those actual films?</p> <p>3 A. No. I saw the reports.</p> <p>4 Q. You rely on the radiology report?</p> <p>5 A. I do.</p> <p>6 Q. Okay.</p> <p>7 A. In this case, I do.</p> <p>8 Q. All right. As far as whether those</p> <p>9 herniations resulted from the event in question or</p> <p>10 were preexisting degenerative conditions, do you</p> <p>11 have any way of knowing?</p> <p>12 A. Yeah. My opinion is that they were caused</p> <p>13 by the fall.</p> <p>14 Q. What is the basis of that opinion?</p> <p>15 A. The fact that, you know, multiple disc</p> <p>16 herniations after a traumatic event with reports of</p> <p>17 neck pain, and having physical exam findings of,</p> <p>18 you know, neck tenderness and spasms. And within a</p> <p>19 reasonable degree of medical probability, that's my</p> <p>20 opinion.</p> <p>21 Q. But again, it relies on her saying that she</p> <p>22 had neck pain following this event; true?</p> <p>23 A. Yes. I mean, these herniations are</p> <p>24 symptomatic in her case. Correct.</p> <p>25 Q. Well, in -- I mean, are thoracic herniations</p>
Page 35	Page 37
<p>1 far as her headaches becoming worse; true?</p> <p>2 A. Yeah. Again, my opinion is based on her</p> <p>3 saying that her -- and what she told her treaters</p> <p>4 that her headaches worsened. Yeah.</p> <p>5 Q. And if she is mistaken, or wrong, or is not</p> <p>6 being candid, then that diagnosis is misplaced;</p> <p>7 true?</p> <p>8 A. It's possible. Yeah.</p> <p>9 Q. All right. So moving on under your analysis</p> <p>10 of findings. And we have kind of talked about this</p> <p>11 as well. You offer a diagnosis -- three diagnoses:</p> <p>12 Posttraumatic headaches, posttraumatic cervical</p> <p>13 radiculopathy, and posttraumatic disc herniations</p> <p>14 at three levels. Do you see that?</p> <p>15 A. Yeah.</p> <p>16 Q. We've already talked about the posttraumatic</p> <p>17 headaches that your opinion relies solely on what</p> <p>18 Ms. Rose -- pardon me -- Ms. Hills said; true?</p> <p>19 A. True.</p> <p>20 Q. What about -- what is the basis of your</p> <p>21 diagnosis that Ms. Hills has cervical</p> <p>22 radiculopathy?</p> <p>23 A. On her history, her neck pain was shooting</p> <p>24 down the arms, and there's a cervical MRI showing</p> <p>25 the herniations at C5-6, C6-7, T1. I'm sorry.</p>	<p>1 typically related to any type of trauma?</p> <p>2 A. They can be. Yeah.</p> <p>3 Q. But as to here -- as I understand it, you</p> <p>4 are relying on the radiology report, which notes</p> <p>5 herniations. Your opinion that they resulted --</p> <p>6 that those herniations that are reflected or</p> <p>7 reported relate to this particular event, as</p> <p>8 opposed to two car wrecks, being punched in the</p> <p>9 face, ordinary disease of life, and degeneration.</p> <p>10 The reason you distinguish it and say it was from</p> <p>11 this accident is based only on what she told you;</p> <p>12 true?</p> <p>13 A. No. And the medical records as well.</p> <p>14 Right. She did report neck pain, stiffness. She</p> <p>15 had, you know, a physical exam that showed she had</p> <p>16 neck pain and spasms. So those things have --</p> <p>17 Q. So what she told you and what she told her</p> <p>18 medical providers; true?</p> <p>19 A. True.</p> <p>20 Q. Is that --</p> <p>21 A. And part of the physical exam that is an</p> <p>22 objective finding is palpating for spasms. Right.</p> <p>23 So --</p> <p>24 Q. But as to what those spasms resulted from,</p> <p>25 any relationship to this event versus these other</p>

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<p>1 events that she reported to you, it relies solely</p> <p>2 on her saying that it came from this fall; true?</p> <p>3 MS. PESCHEL: Objection to form.</p> <p>4 THE WITNESS: To the extent that</p> <p>5 the emergency room, you know, from the</p> <p>6 fall reported those symptoms. Yes.</p> <p>7 BY MR. PAYNE:</p> <p>8 Q. Well, you just read the ER record. Didn't</p> <p>9 she in fact even after the event occurred, she went</p> <p>10 home, and took a nap, and then decided go back to</p> <p>11 the emergency room. Did you say that in there?</p> <p>12 A. What date are we talking about?</p> <p>13 Q. The initial emergency room visit. She did</p> <p>14 not feel bad -- I'll just read from it from</p> <p>15 nurses's notes. She did not feel bad at first, but</p> <p>16 realized at home that she feels hurt.</p> <p>17 Do you see that in there?</p> <p>18 A. I got to find it.</p> <p>19 Q. Okay. I'll tell you what, let's keep</p> <p>20 moving, if you don't mind.</p> <p>21 A. All right.</p> <p>22 Q. Certainly the event at the Sam's Club did</p> <p>23 not necessitate -- based on history and your review</p> <p>24 of the record any paramedics come to the scene;</p> <p>25 true?</p>	<p>1 Q. You did not make an independent review of</p> <p>2 the films to offer that opinion; true?</p> <p>3 A. Correct.</p> <p>4 Q. Now, you go on to say that her impairments</p> <p>5 are permanent. What is the basis of that opinion?</p> <p>6 A. The fact that she persists with the symptoms</p> <p>7 of, you know, neck pain, cervical radiculopathy,</p> <p>8 posttraumatic headaches that are chronic in nature,</p> <p>9 despite treatment. You know, that's why my opinion</p> <p>10 is that she has a permanent impairment.</p> <p>11 Q. But as far as whether she already had a</p> <p>12 permanent impairment from her history of migraine</p> <p>13 headaches -- we've already discussed this, you have</p> <p>14 no way of making that distinction; true?</p> <p>15 A. I'm sorry. Can you repeat that?</p> <p>16 Q. You cannot say, based on a reasonable degree</p> <p>17 of medical certainty, that she was not already</p> <p>18 permanently impaired given her history of migraine</p> <p>19 headaches; true?</p> <p>20 A. I can. No, I can.</p> <p>21 Q. Based only on what she told you?</p> <p>22 A. Yes. And again, the medical records --</p> <p>23 you're right, I didn't review the medial record</p> <p>24 prior, but based on the records I reviewed and her</p> <p>25 history. Yes.</p>
Page 39	Page 41
<p>1 A. I don't recall that.</p> <p>2 Q. She wasn't transported by ambulance;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. She reported -- I'll represent to you that</p> <p>6 she reported that she actually left on her own,</p> <p>7 went home, took a nap, and then realized she</p> <p>8 decided she wanted to go to the emergency room.</p> <p>9 That's reflected in that ER record. Do you have</p> <p>10 any reason to disagree with that?</p> <p>11 A. If you represent it, I'll believe you.</p> <p>12 Q. All right. And as far as any prior neck</p> <p>13 complaints, you have not reviewed any record</p> <p>14 predating the October event at Sam's; true?</p> <p>15 A. True.</p> <p>16 Q. Nor have you reviewed any films, if they</p> <p>17 exist, of any -- for her that predate the event at</p> <p>18 Sam's; true?</p> <p>19 A. Correct.</p> <p>20 Q. All right. As far -- well, really part</p> <p>21 three of your diagnoses really relates to part two.</p> <p>22 You're saying she has disc herniations, but you're</p> <p>23 relying only on the radiology report that reports</p> <p>24 of herniations; true?</p> <p>25 A. Correct.</p>	<p>1 MS. PESCHEL: And if we are going</p> <p>2 to go down there, I have them sitting</p> <p>3 right here. I was just provided the</p> <p>4 previous records last night at about</p> <p>5 5:30. If we could go off the record, he</p> <p>6 can peruse them real quickly.</p> <p>7 MR. PAYNE: Okay. Well, let's</p> <p>8 continue on. And if you want to do that</p> <p>9 with your direct, that's fine.</p> <p>10 MS. PESCHEL: That's fine.</p> <p>11 BY MR. PAYNE:</p> <p>12 Q. All right. Let's shift gears and talk about</p> <p>13 kind of what I would characterize as part two of</p> <p>14 your opinions. And that is the life care plan.</p> <p>15 You have offered a life care plan in this case;</p> <p>16 correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And as it relates to the life care plan,</p> <p>19 what is your opinion that you're offering to the</p> <p>20 jury or opinions?</p> <p>21 A. You're talking about the specific -- the</p> <p>22 cost of future care?</p> <p>23 Q. Well, I mean whatever they are. Tell me</p> <p>24 what your opinions are in terms of what Ms. Hills</p> <p>25 needs in the future.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. Okay. So regarding the future needs of Ms. 2 Hills -- I'm looking at page -- I did two types of 3 care, one more conservative and one less 4 conservative. I'm looking at page 8 of 12. Let me 5 know when you're there. 6 Q. Okay. 7 A. So future care would be neurology visits at 8 least three times per year. Then the 9 Dihydroergotamine medications at least twice a 10 week, Emgality medication one per a week, Reglan 11 (ph) 10 milligram once a week, Naratriptan 40 12 milligrams every night, and a cervical MRI one time 13 every five years. 14 The other option for her would be the same 15 thing, but to treat her headaches also with 16 bilateral greater and lesser occipital nerve blocks 17 two times a year. 18 Q. Now you understand -- well, do you 19 understand whether Ms. Hills has glaucoma? 20 A. Yes, sir. 21 Q. Would you still recommend occipital nerve 22 blocks to someone who has glaucoma? 23 A. Yeah. When you do the -- part of the reason 24 -- she was told not to get cervical epidural 25 steroid injections. She went to the doctor because</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I don't recall exactly. 2 Q. Pretty recently. It's a pretty expensive 3 drug? 4 A. I list the price here, \$8,280 per year. 5 Q. Okay. Are there migraine medications 6 available that are priced less than what you list 7 as 8,000 per year? 8 A. It's possible. Yeah. 9 Q. And likewise, the Dihydroergotamine -- and 10 I'll give that to you -- which I think it goes -- 11 what's its trade name? Which is certainly easier 12 to say. 13 A. Trade name? I don't recall that one. 14 Q. It's something like migratol (ph) or 15 something? 16 A. No. 17 Q. That doesn't ring any bells? 18 A. No. 19 Q. Are you familiar with that medication? 20 A. The Ergotamine family. Yeah. 21 Q. I'm sorry. Which family? 22 A. Ergotamine family. Yeah. 23 Q. Okay. And why did you choose that 24 particular drug that costs \$5,000 a year? 25 A. She was taking it.</p>
<p style="text-align: right;">Page 43</p> <p>1 steroids can aggravate the glaucoma. But when you 2 do occipital nerve blocks, you can do them with 3 steroids. Personally, I use local anesthetics 4 only. I don't use steroids. So it shouldn't be a 5 concern. 6 Q. But again, as to whether this future care 7 resulted from or relates to the event at Sam's 8 Club, we talked about this several times now, is 9 based on what she told you and what she told her 10 other medical providers; true? 11 A. True. 12 Q. As far as -- help me understand -- are you 13 recommending that she take two different 14 high-dollar migraine medications all at once? 15 A. You're talking about the medications that I 16 recommend? 17 Q. Yeah. 18 A. That's the regimen. Yeah. The regimen that 19 I recommended here. Correct. 20 Q. And as I generally understand it, this -- 21 how do you say it? Emgality? 22 A. Yeah. 23 Q. Emgality. That's a drug that just received 24 FDA approval within the last couple of years; 25 right?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Okay. Did you plug in those medications for 2 any reason other than she had taken those two drugs 3 in the past? 4 A. And they work. Yeah. 5 Q. Well, she said they worked; right? 6 A. Yeah. 7 Q. Okay. Is that the sole basis for you using 8 those drugs? 9 A. Yes, sir. 10 Q. Okay. There are other drugs -- migraine 11 drugs that you could have put into your life care 12 plan; true? 13 A. Yes. However, she did try others and she 14 failed, like, Tripheinze (ph), Lyrica. So the 15 regimen she is on right now, you know, she is not 16 headache-free, but it's -- to a certain extent, 17 it's working for her. 18 Q. And you are reporting that she will continue 19 to need that for her entire life span; right? 20 A. Yes. 21 Q. And you have not discounted it for present 22 value; true? 23 A. True. 24 Q. And you have not accounted for the fact that 25 new drugs often fall in price as they're replaced</p>

<p style="text-align: right;">Page 46</p> <p>1 by other new drugs; correct?</p> <p>2 A. It's possible. Yeah.</p> <p>3 Q. So it's certainly possible that this</p> <p>4 Engality will not continue to cost, as you put it,</p> <p>5 \$8,200 a year, but will reduce in price over time;</p> <p>6 true?</p> <p>7 A. Well, it's possible. Yeah.</p> <p>8 Q. Well, based on -- I mean, you're a pain</p> <p>9 doctor in part. You're familiar with pain</p> <p>10 medications. Do prices go down over time as</p> <p>11 different drugs come in and out of style? For lack</p> <p>12 of a better phrase.</p> <p>13 A. Now, it's possible. But again, there are</p> <p>14 examples of -- I mean, you might have heard a</p> <p>15 medication for -- I think it was tuberculosis.</p> <p>16 Some company bought that particular drug, and then</p> <p>17 they raised the prices, and --</p> <p>18 Q. And he went to jail.</p> <p>19 A. No. That was somebody else. But, you know,</p> <p>20 so is it possible that new medications will come</p> <p>21 and compete with this one? Driving the price down</p> <p>22 is possible. Yeah.</p> <p>23 Q. Okay. And just so we are clear: Your</p> <p>24 opinion as to Ms. Hills' future need of</p> <p>25 pharmaceutical drugs, one number, does not consider</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. What is -- why do you -- how do you arrive</p> <p>2 at that opinion?</p> <p>3 A. So this is a conservative life care plan;</p> <p>4 right? I mean, you could make the argument that</p> <p>5 she was a candidate for the epidural steroid</p> <p>6 injection, which wasn't done because of her</p> <p>7 glaucoma. However, there are other kinds of</p> <p>8 injections and therapy. She may be a candidate for</p> <p>9 or such as cervical radial nerve branch blocks,</p> <p>10 cervical radiofrequency lesioning. I'm not a</p> <p>11 surgeon, but it's possible that she might need</p> <p>12 surgery in the future. Spinal cord stimulator</p> <p>13 trials, implants, and all of that stuff, I didn't</p> <p>14 include that in here (witness indicating). But at</p> <p>15 the very least, to monitor the condition of her</p> <p>16 cervical spine once every five years.</p> <p>17 Q. And you price the cervical spine that she'll</p> <p>18 need -- or pardon me. Cervical MRI that she'll</p> <p>19 need every five years at \$590.80; true?</p> <p>20 A. I'm sorry. What?</p> <p>21 Q. You priced the cervical MRI at an average</p> <p>22 annual cost of \$590.80. True?</p> <p>23 A. You changed the page on me. It's 5 -- yeah,</p> <p>24 you're right, \$590.80. Yeah.</p> <p>25 Q. Okay. And in fact, the cervical MRI that</p>
<p style="text-align: right;">Page 47</p> <p>1 present value of the future needs of those drugs;</p> <p>2 true?</p> <p>3 A. No. When you said present value, I did not</p> <p>4 adjust it -- I used today's dollars.</p> <p>5 Q. Okay. And that is in part what I'm asking.</p> <p>6 And let's be clear about all of those points. You</p> <p>7 did not adjust your figure for present value for</p> <p>8 the future need of these drugs; true?</p> <p>9 A. True.</p> <p>10 Q. And likewise, you did not consider that</p> <p>11 those drugs may change in price over time; true?</p> <p>12 A. I did not make that calculation. Correct.</p> <p>13 Q. And your inclusion of these drugs is based</p> <p>14 only on the fact that she has used them in the past</p> <p>15 with some success; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And her need for those drugs, it may change</p> <p>18 over time; correct?</p> <p>19 A. It's possible. She may need more.</p> <p>20 Q. She may need more or she may need less?</p> <p>21 A. It's possible.</p> <p>22 Q. All right. And as far as the -- well, the</p> <p>23 need of a cervical MRI, you're saying she needs one</p> <p>24 every five years?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 49</p> <p>1 Ms. Hills had in this instance was done --</p> <p>2 A. Could I interrupt you for a second?</p> <p>3 Q. Of course.</p> <p>4 A. The MRI cost is \$2,954. So what you're</p> <p>5 looking at is a different table that divides it by</p> <p>6 five years.</p> <p>7 Q. Well, how much are you suggesting or opining</p> <p>8 that the cervical MRI is going to cost? Each one</p> <p>9 of them?</p> <p>10 A. \$2,954. And that's page 8 of 12.</p> <p>11 Q. Oh. Okay. So you're actually saying that</p> <p>12 the cervical MRI will cost almost \$3,000? I guess</p> <p>13 I did misread your table. You're saying the MRI</p> <p>14 costs that much?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Has that been your practice and experience</p> <p>17 that they actually cost that much?</p> <p>18 A. I've seen higher than that.</p> <p>19 Q. Well, did you look at what she was actually</p> <p>20 billed in this case for a cervical MRI that she did</p> <p>21 have?</p> <p>22 A. I don't recall that.</p> <p>23 Q. It isn't -- you do have the billing records</p> <p>24 though; right?</p> <p>25 A. I think so.</p>

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<p>1 Q. All right. I will hand you what I will mark 2 as Exhibit Number 2. 3 A. Okay. 4 (Exhibit No. 2 was marked for 5 identification.) 6 BY MR. PAYNE: 7 Q. Did Ms. Hills undergo a cervical MRI in this 8 instance? 9 A. Yes, sir. 10 Q. And when was that done? 11 A. I have here November 25, 2016. 12 Q. And what was she initially charged for that 13 cervical MRI? 14 A. \$352. 15 Q. All right. And what did the provider 16 ultimately accept in satisfaction for having that 17 cervical MRI done? 18 MS. PESCHEL: Do you have both 19 sides of the bills? 20 MR. PAYNE: I don't know what that 21 means. 22 MS. PESCHEL: Scott White bills 23 facility charge and doctor charge. So 24 if you only have one of them, that's not 25 the full charge of the MRI.</p>	<p>1 MRIs done; true? 2 A. True. Because I used the database that 3 includes bill charges from Baylor Scott & White. 4 Q. And likewise, did you see what she was 5 billed for the Engality? And what she was actually 6 billed for that medication? 7 A. I don't recall that. 8 Q. Okay. 9 MR. PAYNE: Let me hand you what 10 I'll mark as Exhibit 3. 11 (Exhibit No. 3 was marked for 12 identification.) 13 BY MR. PAYNE: 14 Q. What do you have as the price per dose of 15 the Engality? What number do you plug in? 16 A. Per year? \$8,280. 17 Q. Well, per dose. 18 A. So what I did was I usually look at the cost 19 of the total 120 milligrams, and then look at the 20 cost for that for the whole year. So I guess you 21 can divide that by 12. 22 Q. And what's your number again? 23 A. The -- can divide it if you want. So if you 24 divide it by 12, it's \$690 a month. 25 Q. Okay.</p>
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<p>1 MR. PAYNE: Okay. 2 THE WITNESS: So to answer your 3 question \$111.25. 4 BY MR. PAYNE: 5 Q. And so, your opinion as to future cervical 6 MRIs did not account the actually -- and if I have 7 a misrepresentation, either way your number doesn't 8 account for what she was actually billed in this 9 case; true? 10 A. That number is the average of, you know, the 11 region for that. 12 Q. And we'll get to that. But your number does 13 not consider what she was actually billed; true? 14 A. It does consider it. Yeah. 15 Q. No. What she was actually billed for this 16 charge. 17 A. Well, the database I use looks at all bill 18 charges in that region. 19 Q. We're going to get to this. But in this 20 instance, this particular bill, do you know what 21 she was billed in this case for her cervical MRI? 22 A. Yeah. \$352. Yeah. 23 Q. And do you -- and you did not consider your 24 actual bill in offering an opinion as to what it 25 will cost her in the future to have more cervical</p>	<p>1 A. For the Engality. 2 Q. All right. And I'm going to hand you 3 Exhibit 3, and show you, and represent to you these 4 are billing charges from a Walmart Pharmacy. And 5 you see it was actually a little bit lower than 6 that. What she was actually billed for that? 7 A. She was billed \$1,153.60. Correct. 8 Q. No. Look at each dose. 120 milligrams, 9 they're each about 575. That's like a triple dose 10 or a double dose? 11 A. Oh, okay. I see Engality 120 milligrams per 12 millimeter injection \$577.45. 13 Q. And again, your life care plan does not 14 account for what she has actually been billed in 15 the past, just this input that you use or the 16 system that you use; true? 17 A. True. 18 Q. Okay. 19 A. Can I get some water? If you don't mind. 20 Q. Of course. Yeah. Let's take a little 21 break. 22 THE VIDEOGRAPHER: We are off the 23 record at 4:14 p.m. 24 (At this time, off the record.) 25 (At this time, back on the record.)</p>

<p style="text-align: right;">Page 54</p> <p>1 THE VIDEOGRAPHER: Standby. We are 2 back on the record at 4:16 p.m. 3 BY MR. PAYNE: 4 Q. All right. Dr. Miranda, are you ready to 5 continue? 6 A. Yes, sir. 7 Q. All right. Dr. Miranda, the -- let's talk 8 about how you arrived -- you talked about an 9 average. How do you arrive at the annual costs for 10 each of the medications and the other treatment 11 that you have recommended for Ms. Hills? 12 A. I used it -- for the medications, I used 13 GoodRX. For the neurology visits, I have the MRI. 14 I used a database called Fairhealth.org, the same 15 thing for the injections, occipital nerve blocks. 16 Q. All right. So as far as GoodRX -- 17 interestingly, I just happened upon a website 18 called GoodRX, and I'll mark this as Exhibit 4. 19 And again, this is just what I looked up 20 yesterday, just kind of looking at this thing. You 21 can see down here at the bottom, it says www.getrx, 22 and it actually lists a bunch of pricing for that 23 Emgality. Do you see that? 24 A. Yes, sir. 25 (Exhibit No. 4 was marked for</p>	<p style="text-align: right;">Page 56</p> <p>1 A. No, not even. I mean, if you look at the 2 estimated retail price per dose, I divided my 3 number by 12. It was 690. I'm looking at the 4 estimated retail price from Walmart 658, CVS 787, 5 Walgreens 691, Kroger's 691, Target 680, Costco 6 676. So it's there, you know, in the 600s. 7 Q. Using the retail pricing; right? 8 A. No. 9 Q. You don't consider any discounts that are 10 readily available; right? 11 A. Correct. 12 Q. So your life care plan does not consider 13 either the discount reflected in Ms. Hills' own 14 records, nor does it reflect generally available 15 discounted pricing available on the Internet; true? 16 A. True. 17 Q. All right. And as far as the 18 pharmaceuticals go, it's pretty simple what you 19 have done. You have simply taken a retail price 20 for Emgality, and have assumed that Ms. Hills will 21 not change that medication -- well, first it 22 assumes her life span; right? 23 A. Yes. 24 Q. And then it assumes she will continue to 25 take that exact medication; right?</p>
<p style="text-align: right;">Page 55</p> <p>1 identification.) 2 BY MR. PAYNE: 3 Q. And then again, it processes it even lower 4 than what she's been paying, does it not? 5 A. I don't know why they used here, but the 6 numbers here are -- well, you look at the retail 7 price, not looking at the free discount; right? 8 So, we don't use collateral sources when we do life 9 care plans. So when I do use these numbers, I use 10 the estimated retail price. 11 Q. Well, I'll tell you -- I'll represent to 12 you, all I did was type in cost of Emgality, and 13 that page popped up, and that pricing popped up. 14 Did you do something different? 15 A. I put the area code for the patient. That 16 would be the only different thing. 17 Q. Okay. At least based on what I've 18 represented to you that I did, that pricing is 19 different than what's reflected in your report for 20 what is Emgality pricing; true? 21 A. True. 22 Q. And as far as the -- 23 A. Mind you, it's not way off. 24 Q. No. It's not way off. About 100 bucks a 25 pop off; right?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Sure. 2 Q. And then it assumed that the price of that 3 medication will not change over the next, what is 4 it, 30 or 40 years? 5 A. Whatever her life care plan is. Yeah. 6 Q. All right. Okay. Now, as far as the 7 medical treatment, what did you rely on as a basis 8 for your opinions? 9 A. I'm sorry. I don't understand the question. 10 You mean what database I use for -- 11 Q. Yes. 12 A. So for the neurology visits, the cervical 13 MRI, and the occipital nerve blocks, I used a 14 database called Fairhealth.org. 15 Q. But as far as the -- and I am not -- I mean, 16 obviously you're a professional and have a lot more 17 education than I do. You know, you treat patients. 18 I'm not trying to belittle what you do. 19 What I'm saying is -- would you 20 agree with me that at least as far as offering an 21 opinion about the pharmaceutical pricing that Ms. 22 Hills can anticipate in the future, that doesn't 23 really require any of your medical background or 24 expertise, either as a life care planner or a 25 physician; right?</p>

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<p>1 A. The question is do I require medical 2 expertise in determining exactly what -- the 3 changes in costs in the future or -- 4 Q. Well, you -- as I understood what you did 5 here, you just got the retail price at GoodRX.com 6 for Engality, and the one I can't say, and you have 7 assumed all of those things that she'll take it for 8 the rest of her life, and it won't change in price; 9 right? Those opinions do not require your medical 10 expertise and they also do not require your life 11 care planner expertise; true? 12 MS. PESCHEL: Objection. Form. 13 THE WITNESS: I mean, as a life 14 care planner, they train us to look up 15 pricing; right? So, I mean, it does 16 require that part of the background. 17 As far as the medical 18 component and recommendations, 19 obviously, you know, my training and 20 expertise in these matters. 21 As far as, you know, 22 determining if these numbers are going 23 to change, I don't know that for 100 24 percent sure. 25 BY MR. PAYNE:</p>	<p>1 terms that I -- you know, I'm 2 recommending a treatment for headaches 3 and full-out care. And the life care 4 planning part comes in when we look at 5 the costing. I mean, that's something 6 that they train us how to do. 7 BY MR. PAYNE: 8 Q. But now you're not recommending treatment to 9 Ms. Hill, are you? 10 A. Well, the treatment that I'm putting here. 11 Yeah. She's not my patient, but the life care plan 12 is future treatment. 13 Q. But let's be clear: Are you making a 14 recommendation to Ms. Hills as to what she needs to 15 do in the future? 16 A. That's what the life care plan is. Yeah. 17 Q. It's a recommendation to her? Do you -- are 18 you comfortable doing that even though you're not 19 her treating physician? 20 A. Again, she's not my patient. But the 21 recommendations that I'm making, you know, they're 22 medical recommendations. 23 Q. Okay. 24 A. Knowing she's not my patient. 25 Q. All right. So we are clear on that: You</p>
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<p>1 Q. Yeah. And you haven't offered that opinion; 2 right? 3 A. What opinion? 4 Q. That they'll change, that the pricing will 5 change? 6 A. They might. They might. Yeah. They might 7 change. 8 Q. But your opinion assumes they're not going 9 to change; right? 10 A. Well, my opinion -- again, I used today's 11 dollars. I don't have a database telling me what 12 the price is going to be in the future. 13 Q. All right. So back to my original question: 14 Your opinion as to Ms. Hills' future pharmaceutical 15 costs is only based on you looking up the retail 16 price of those medications in today's dollars, and 17 assuming it for some period of time; true? 18 A. Correct. 19 Q. And would you agree that that does not 20 require expertise to offer that opinion either from 21 your medical background or your life care planner 22 background; true? 23 MS. PESCHEL: Objection to form. 24 THE WITNESS: Little confusing. It 25 does require my medical background in</p>	<p>1 have not treated Ms. Hills in the past, you do not 2 intend to treat her in the future. Are both of 3 those things correct? 4 A. Correct. 5 Q. You do not intend to monitor her 6 medications, monitor her condition, or do anything 7 of the kind; correct? 8 A. True. 9 Q. You do not consider her your patient and the 10 patient privilege does not apply here; true? 11 A. True. 12 Q. And so, maybe it's just the word 13 "recommendation" or you're recommending it. Are 14 you truly asking her, or telling her to take this 15 course of action, or are you just simply saying if 16 she takes this course of action, it will cost X 17 dollars? 18 A. Again, my recommendations are based on what 19 I -- on my training, and what I read in the 20 reporting, and this is what I feel she is going to 21 need in the future, and this is the associated 22 costs. 23 Q. But are you telling her to do this in the 24 future? 25 A. Well, I haven't had the conversation with</p>

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<p>1 her. I mean, I submitted the report to the 2 attorneys and I would assume they would have showed 3 it to her; right? 4 Q. But, I mean, again in your capacity as a 5 non-treater, should you be treating her what to do 6 in the future? 7 A. I mean, this is a different context; right? 8 Because I'm not a treater. These are the 9 recommendations. 10 Q. Okay. And as to whether Ms. Hills has 11 continued to take the Emgality or the Dihydroergo 12 -- how do you say that? 13 A. Dihydroergotamine. 14 Q. Yeah. As to whether Ms. Hills has continued 15 to take those medications for the past six months, 16 do you know? 17 A. So I did review the records provided 18 recently. I'll tell you which one. It's Baylor 19 Scott & White neurology clinic. It's dated from 20 June 27, 2019 through October 10, 2019. And she 21 continued treating for her headaches. She reported 22 taking the OCPs, which I didn't include in the life 23 care plan, which were also working for her 24 headaches and -- 25 Q. What are OCPs?</p>	<p>1 those records, but I didn't see them leading up to 2 today. What -- did they show that she continued to 3 take the Emgality? 4 A. Let me double-check on that. Do you mind if 5 I look at this for a second? 6 Q. No. No. Not at all. 7 A. Yes, she was. 8 Q. And what about the other one? The 9 Dihydroergo -- 10 A. Yeah. 11 Q. And what else is she taking? 12 A. Toradol, Reglan or Metoclopramide, Xalatan, 13 but that's for the eye, Cyclobenzaprine, Kurvelo. 14 Q. What -- can you help me understand what each 15 of these are prescribed for in her case? 16 A. Hold on a second. Do you mind? So the 17 Xalatan is an ophthalmic solution, the Emgality is 18 for the headaches, the Reglan is also for 19 headaches, the Dihydroergotamine also for the 20 headaches, Dihydroergot for severe headaches, 21 Cyclobenzaprine also works for headaches, and the 22 Kurvelo in this case is the contraceptive pill, 23 also works for headaches. 24 Q. Back to an earlier question. Can you 25 explain -- help me understand how your particular</p>
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<p>1 A. Oral contraceptive pills. 2 Q. What -- oral what? 3 A. Contraceptive. 4 Q. Contraceptive? 5 A. Yeah. 6 Q. And am I thinking the same thing? We're 7 talking about a contraceptive pill? What does that 8 have to do with treatment here? 9 A. Yeah. It works for some kinds of headaches. 10 Yeah. 11 Q. Well, does it work for posttraumatic 12 headaches? 13 A. In her case it was. Yeah. 14 Q. Well, is it typically used to treat 15 posttraumatic headaches? 16 A. It depends on the response of the patient. 17 I mean, if it works. 18 Q. Is it routinely prescribed for that purpose? 19 A. The OCPs, no. It's -- to my understanding, 20 I believe it's an off-label prescription, you know, 21 an indication probably. 22 Q. Okay. So oral contraceptives are not on the 23 label prescribed for posttraumatic headaches; true? 24 A. Not that I recall. 25 Q. All right. So -- and I'm sure I do have</p>	<p>1 expertise is applied in offering an opinion that 2 Ms. Hills will need this expensive headache 3 medication for the duration of her life. How that 4 number relies on expertise as opposed to simply 5 looking up the price and multiplying? 6 A. I'm having trouble understanding the 7 question. 8 Q. Let me ask you -- yeah, I agree. It was 9 kind of convoluted. Let me start over. 10 How did you apply your expertise in 11 offering an opinion as to the price for the 12 migraine medication that Ms. Hills will need in the 13 future? How did you use your expertise? 14 A. So, the price, again, I looked that up, as 15 you said. Obviously, I mean, I don't know that by 16 heart. So I identified the medication that I think 17 she is going to need in the future, and I looked up 18 the price, and I extended that throughout her 19 lifetime. 20 Q. And based on what you just said, that does 21 not require your expertise to offer that opinion; 22 true? 23 MS. PESCHEL: Objection. Form. 24 THE WITNESS: I mean, it does 25 because I'm recommending the medication,</p>

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<p>1 and the price that I found, and, you</p> <p>2 know, doing the research for it. So it</p> <p>3 does.</p> <p>4 BY MR. PAYNE:</p> <p>5 Q. And what is the basis that you're</p> <p>6 recommending that medication?</p> <p>7 A. It's working for her headaches,</p> <p>8 posttraumatic headaches.</p> <p>9 Q. All right. The medical care itself. You</p> <p>10 rely on something called Fairhealth.org?</p> <p>11 A. The medical care -- you mean the injections,</p> <p>12 neurology visits, and the cervical MRI price? Yes,</p> <p>13 sir.</p> <p>14 Q. All right. As I think I've understood it,</p> <p>15 what you do is you insert -- you get a subscription</p> <p>16 to Fairhealth.org; correct?</p> <p>17 A. Yeah.</p> <p>18 Q. You insert the CPT codes, and you insert, I</p> <p>19 think, a ZIP code, and Fairhealth will spit out a</p> <p>20 number for you; right?</p> <p>21 A. Several. Yeah.</p> <p>22 Q. Okay. And that is the number that you use</p> <p>23 in terms of filling out, or imputing, or preparing</p> <p>24 your life care plan as far as what this medical</p> <p>25 care is going to cost in the future; correct?</p>	<p>1 service; true?</p> <p>2 A. Correct.</p> <p>3 Q. All right. And you agree generally -- it's</p> <p>4 a fair, and true accurate statement that a medical</p> <p>5 provider will accept less than what they charge for</p> <p>6 any particular service; true?</p> <p>7 A. It's possible. Depending on if they have a</p> <p>8 contract or not.</p> <p>9 Q. And a particular -- a notal example of that</p> <p>10 is the retail price that you have used for the</p> <p>11 cervical MRI was \$2,000 plus; right?</p> <p>12 A. Yeah.</p> <p>13 Q. And what Baylor Scott & White charged here,</p> <p>14 at least according to that document, Exhibit 2, was</p> <p>15 significantly less. True?</p> <p>16 A. It was -- what they charged was \$352 for the</p> <p>17 cervical MRI. Correct.</p> <p>18 Q. All right. And so, are you bringing -- are</p> <p>19 you applying anything independent based on your own</p> <p>20 expertise as a life care planner and medical doctor</p> <p>21 in offering those figures, are you simply relying</p> <p>22 on Fairhealth.org?</p> <p>23 A. I'm relying on the database that determines</p> <p>24 the cost of cervical MRIs, for example, in this</p> <p>25 case in that region.</p>
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<p>1 A. Yeah.</p> <p>2 Q. You do not rely on any other data source, or</p> <p>3 other information, or other statistical data, or</p> <p>4 anything other than Fairhealth.org in the procedure</p> <p>5 that you use; true?</p> <p>6 A. True.</p> <p>7 Q. All right. And as far as the particulars</p> <p>8 that Fairhealth relies on in giving you that data,</p> <p>9 can you explain to us how they arrive there? How</p> <p>10 they get there?</p> <p>11 A. So those are billed rates from providers in</p> <p>12 that area from insurance companies, meaning</p> <p>13 Medicare and private payers.</p> <p>14 Q. All right. But as to the particular data,</p> <p>15 where it comes from, the particular payors,</p> <p>16 particular billers, how large a server they use, or</p> <p>17 how large a sample they use, you do not know that</p> <p>18 information; true?</p> <p>19 A. I don't have the, you know, the explanation</p> <p>20 of benefits of each CPT code and service provider</p> <p>21 from the providers in that area. I don't have that</p> <p>22 raw data.</p> <p>23 Q. And as I think I understand it, what -- the</p> <p>24 number that is given to you is what is charged, not</p> <p>25 what is accepted by a provider to perform that</p>	<p>1 Q. And do you know if Fairhealth utilizes</p> <p>2 different rates, like private insurance versus</p> <p>3 Medicare versus Medicare versus workers' comp? Do</p> <p>4 you know if they utilize all of that information,</p> <p>5 or any of it, or --</p> <p>6 A. They do use that information for the bill</p> <p>7 charges, not the contracted rates. Now Medicare</p> <p>8 has their own website where they show you how much</p> <p>9 they're paying in a given year. And if you up a</p> <p>10 private payer, I'm almost certain that that</p> <p>11 information is priority. I don't think they would</p> <p>12 share that. To my knowledge, I don't know if</p> <p>13 there's a database for BlueCross, or private payers</p> <p>14 in Texas.</p> <p>15 Q. But at least as far as the numbers you use,</p> <p>16 you're relying only on Fairhealth.org and no other</p> <p>17 database; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And nothing -- no independent analysis or</p> <p>20 investigation; true?</p> <p>21 A. I haven't done a survey of costs in that</p> <p>22 area. Correct.</p> <p>23 Q. And certainly, that amount is what you were</p> <p>24 noting your opinion as to the charges in the future</p> <p>25 is simply that it's the charges that might be</p>

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<p>1 anticipated; correct?</p> <p>2 A. Correct.</p> <p>3 Q. It's not what those providers would accept</p> <p>4 in satisfaction for the services that they</p> <p>5 provided; true?</p> <p>6 A. True.</p> <p>7 Q. And those, just like the pharmacy bills --</p> <p>8 and we may have already addressed this. None of</p> <p>9 the charges, pharmacy or medical, do you reduce to</p> <p>10 present value; true?</p> <p>11 A. True.</p> <p>12 Q. And likewise, your numbers do not reflect</p> <p>13 that those charges may be higher in the future, or</p> <p>14 lower in the future, or changed; true?</p> <p>15 A. True.</p> <p>16 Q. Did you visit with any of Ms. Hills'</p> <p>17 treating doctors?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you practice in Bell County?</p> <p>20 A. No.</p> <p>21 Q. And you recognized that the Fairhealth</p> <p>22 website has a disclaimer on it that there are</p> <p>23 limitations on its use; true?</p> <p>24 A. I believe there's something to that effect.</p> <p>25 Yeah.</p>	<p>1 on it?</p> <p>2 A. I don't recall that. But I do know for a</p> <p>3 fact that, at least that last time I checked, they</p> <p>4 have specific examples of how their database is</p> <p>5 used by life care planners. So they do acknowledge</p> <p>6 that.</p> <p>7 Q. Would it be fair to summarize those</p> <p>8 disclaimers as saying, we try really hard to be</p> <p>9 accurate, but we can be off. Is that fair?</p> <p>10 A. I mean, I -- you're saying here where does</p> <p>11 it say that?</p> <p>12 Q. Well, I'm just saying is that a good summary</p> <p>13 of that disclaimer?</p> <p>14 A. What I just read has nothing to do with what</p> <p>15 you said.</p> <p>16 Q. Well, does their disclaimer suggest, at</p> <p>17 least to the consumer, that you cannot or you</p> <p>18 should use caution in relying on our data, because</p> <p>19 while we try to be accurate, it can be inaccurate?</p> <p>20 A. Do you mind if I continue reading this?</p> <p>21 Q. Of course.</p> <p>22 A. So for Exhibit 6, that's the next page.</p> <p>23 Okay. Yes. I see what you're saying. Yeah.</p> <p>24 Q. And just generally speaking, is that an</p> <p>25 accurate summary of essentially what that says?</p>
Page 71	Page 73
<p>1 Q. And I'll hand you what I will mark as 5 and</p> <p>2 6, I think.</p> <p>3 (Exhibit Nos. 5 and 6 were marked</p> <p>4 for identification.)</p> <p>5 BY MR. PAYNE:</p> <p>6 Q. And I'll give you -- you can peruse it, and</p> <p>7 then we'll talk about it in a second.</p> <p>8 A. I'm good if you want to ask.</p> <p>9 Q. I don't -- not reading it word for word, but</p> <p>10 can you offer us just a general summary of kind of</p> <p>11 the disclaimer that they made?</p> <p>12 A. So for health consumer website -- again,</p> <p>13 mine is not consumer website because they have a</p> <p>14 public one, and I'm part of the, you know, the</p> <p>15 members of they're not for consumer public access</p> <p>16 website, which -- in their website, they</p> <p>17 specifically list life care planners as people that</p> <p>18 are using the software.</p> <p>19 So we acknowledge that much. So it</p> <p>20 considers to say, and your -- you can plan for this</p> <p>21 thoroughly and provided solely for personal</p> <p>22 consumer use, and not for any commercial</p> <p>23 professional research, litigation, or other</p> <p>24 purpose.</p> <p>25 Q. Do you know if your version has a disclaimer</p>	<p>1 A. So on Exhibit 6, it says, despite our</p> <p>2 efforts, the information on this site may be</p> <p>3 inaccurate, or incomplete, or out of date. We make</p> <p>4 no representation or guarantee that the information</p> <p>5 on the site is complete, accurate, or current.</p> <p>6 Q. Do you know whether Ms. Hills missed any</p> <p>7 work because of her headaches?</p> <p>8 A. I don't recall that.</p> <p>9 Q. Do you know if it affected her other daily</p> <p>10 activities?</p> <p>11 A. I don't recall that.</p> <p>12 Q. Do you know what Ms. Hills medical expenses</p> <p>13 have been in the past -- up to at least July of</p> <p>14 2019?</p> <p>15 A. That, I don't recall.</p> <p>16 Q. I'll represent to you it's somewhere in the</p> <p>17 neighborhood of \$13,000 or at least according to</p> <p>18 what's been provided to my office.</p> <p>19 And just so I'm clear, you understand</p> <p>20 that between 2016 and the middle of 2019, Ms. Hills</p> <p>21 has incurred medical expenses totalling</p> <p>22 approximately \$13,000. Do you understand that?</p> <p>23 A. If you represent that, I believe you. Yes,</p> <p>24 sir.</p> <p>25 Q. And your life care plan suggests that she</p>

<p style="text-align: right;">Page 74</p> <p>1 will require treatment totalling how much per year?</p> <p>2 A. Total, a lower number of \$713,802 or a</p> <p>3 higher number of \$1,261,770.</p> <p>4 Q. And it looks like years of duration is 48.</p> <p>5 So what is that annually?</p> <p>6 A. Hold on. So annually it's \$26,623.80.</p> <p>7 Q. All right. And so, at least you're</p> <p>8 projections of approximately 20 or \$26,000 a year,</p> <p>9 that has not been borne out by her last three years</p> <p>10 of treatment; true?</p> <p>11 A. Are you saying incurred?</p> <p>12 Q. Yeah.</p> <p>13 A. Correct. Yeah.</p> <p>14 Q. So three years -- let's say -- let's call it</p> <p>15 12. Well, yeah, just because we can divide 12</p> <p>16 pretty easy by three. So that's about 4,000 a year</p> <p>17 that she's incurred in the past, plus -- and you're</p> <p>18 suggesting, what, 20-something each year in the</p> <p>19 future?</p> <p>20 A. \$26,323.80. Yeah.</p> <p>21 Q. All right. Dr. Miranda, you -- again, we've</p> <p>22 talked about you were hired by --</p> <p>23 A. I'm sorry.</p> <p>24 Q. Of course.</p> <p>25 A. This one was with the occipital nerve</p>	<p style="text-align: right;">Page 76</p> <p>1 time. You have billed The Carlson Law Firm \$7,200?</p> <p>2 A. Yes.</p> <p>3 Q. And what is that for? Is that just for the</p> <p>4 life care plan?</p> <p>5 A. Yes.</p> <p>6 Q. And that includes a rush fee?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And then you billed -- do you</p> <p>9 still bill \$2,500 for your deposition?</p> <p>10 A. I did today. Yeah.</p> <p>11 Q. All right. And if -- and I'm about done.</p> <p>12 So if it's two hours, you're not going to bill them</p> <p>13 any more, are you?</p> <p>14 A. I don't anticipate doing so.</p> <p>15 Q. And have you been asked to appear at trial</p> <p>16 in this case?</p> <p>17 A. I don't recall that, but if I need to go,</p> <p>18 I'll consider doing trial.</p> <p>19 Q. What do you bill for trial time?</p> <p>20 A. \$5,000.</p> <p>21 Q. Do you -- how about if it's up in Waco?</p> <p>22 A. I haven't -- is this in Waco? I didn't know</p> <p>23 that. I haven't thought about that. I don't think</p> <p>24 so.</p> <p>25 Q. Okay. At this time in the beginning of</p>
<p style="text-align: right;">Page 75</p> <p>1 blocks, you know. The other one was an average</p> <p>2 annual cost of \$14,907.80. So that's -- the one we</p> <p>3 just discussed was the higher number, and the one I</p> <p>4 just said is the one without the occipital nerve</p> <p>5 blocks.</p> <p>6 Q. And to date, are you aware of Ms. Hills</p> <p>7 having any occipital nerve blocks?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Okay.</p> <p>10 A. But it was said she was recommended Botox</p> <p>11 injections, which might -- I don't recall doing</p> <p>12 specific research, but it might be more expensive</p> <p>13 than the occipital nerve blocks.</p> <p>14 Q. But again, kind of back to this theme, for</p> <p>15 the past three years, Ms. Hills has not had any</p> <p>16 type of occipital nerve blocks; true?</p> <p>17 A. Not that I recall. No.</p> <p>18 Q. All right. And you -- at least one of your</p> <p>19 averages, the higher average, suggests that she</p> <p>20 will need them annually for the next 48 years;</p> <p>21 true?</p> <p>22 A. Yes. Well, two.</p> <p>23 Q. Two per year?</p> <p>24 A. Yeah.</p> <p>25 Q. All right. So again, you billed for your</p>	<p style="text-align: right;">Page 77</p> <p>1 2020, how many life care plans have you prepared in</p> <p>2 this person injury context?</p> <p>3 A. North of 250.</p> <p>4 Q. And how many depositions have you given?</p> <p>5 A. Deposition trial, north of 50.</p> <p>6 Q. How many trial appearances have you given?</p> <p>7 A. I'm going to guess six to eight.</p> <p>8 Q. When was the last one you gave?</p> <p>9 A. Yesterday.</p> <p>10 Q. Really?</p> <p>11 A. Yeah.</p> <p>12 Q. In Travis County?</p> <p>13 A. Yes.</p> <p>14 Q. What was your opinion that you offered?</p> <p>15 A. It was a cervical spine injury.</p> <p>16 Q. And what -- and did you offer life care</p> <p>17 opinions or as a treating physician?</p> <p>18 A. No. As a life care planner.</p> <p>19 Q. Okay. And what -- generally speaking, what</p> <p>20 was your recommendation in that case?</p> <p>21 A. That was a cervical spinal cord stimulator</p> <p>22 trial, and implant, and epidural steroid</p> <p>23 injections.</p> <p>24 Q. Have you testified live at trial in an</p> <p>25 instance involving migraine headaches or</p>

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<p>1 posttraumatic headaches?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Have you offered deposition testimony on</p> <p>4 occasion involving posttraumatic headaches or an</p> <p>5 opinion involving that?</p> <p>6 A. They're rare. Not that I recall.</p> <p>7 Q. I did fail to ask you for one, but do you</p> <p>8 still have an Excel spreadsheet of all of your</p> <p>9 testimony?</p> <p>10 A. I do. It wasn't asked of me, but I have</p> <p>11 one. Yeah.</p> <p>12 Q. And is it up-to-date, including yesterday?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Well, Dr. Miranda, it's always a</p> <p>15 pleasure. I appreciate you being so candid with</p> <p>16 me.</p> <p>17 A. Sure.</p> <p>18 MR. PAYNE: And with that, I pass</p> <p>19 the witness.</p> <p>20 - - -</p> <p>21 CROSS-EXAMINATION</p> <p>22 - - -</p> <p>23 BY MS. PESCHEL:</p> <p>24 Q. Good afternoon, Dr. Miranda.</p> <p>25 A. Hi.</p>	<p>1 lesioning, spinal cord stimulators, and things of</p> <p>2 that nature.</p> <p>3 So we get a better expertise doing those</p> <p>4 procedures in the fellowship of pain medicine. I</p> <p>5 was grandfathered into the brain injury medicine</p> <p>6 board.</p> <p>7 Q. Okay. And what do you mean by that?</p> <p>8 A. I didn't have to do a fellowship to sit for</p> <p>9 the board.</p> <p>10 Q. Okay. But you -- what did sitting for the</p> <p>11 board entail?</p> <p>12 A. Well, you have to be board certified in</p> <p>13 physical medicine and rehabilitation, and have</p> <p>14 experience treating people with brain injuries.</p> <p>15 Q. Okay. And then you sit for an exam?</p> <p>16 A. You sit for an exam. Yeah.</p> <p>17 Q. Okay. And is it something extra to pursue</p> <p>18 -- like, do most physical medicine rehab doctors</p> <p>19 also have board certifications in pain medicine, or</p> <p>20 is that something -- are those two separate</p> <p>21 certifications?</p> <p>22 A. They're two separate ones. Yeah.</p> <p>23 Q. Okay. And it is my -- so you testified</p> <p>24 earlier you were certified as a life care planner;</p> <p>25 correct?</p>
Page 79	Page 81
<p>1 Q. I just want to kind of circle back to a few</p> <p>2 things. Now, you stated that your speciality areas</p> <p>3 were pain management, physical medicine,</p> <p>4 rehabilitation, and brain injury; is that correct?</p> <p>5 A. Brain injury and medicine. Yeah.</p> <p>6 Q. Okay. And for the jury, can you please just</p> <p>7 briefly describe what each of those specialty areas</p> <p>8 are?</p> <p>9 A. So, physical medicine and rehabilitation,</p> <p>10 the residency entails mostly an in-patient and</p> <p>11 out-patient setting. The in-patient setting, we</p> <p>12 take care of patients that have more serious</p> <p>13 musculoskeletal, or central nervous system</p> <p>14 conditions, like strokes, spinal cord injury, hip</p> <p>15 replacements, multiple fractures, and multiple</p> <p>16 bones, polytrauma, subarachnoid hemorrhage. What</p> <p>17 else? Joint replacements, cerebral palsy. That's</p> <p>18 the inpatient side. On the outpatient side, we</p> <p>19 take care of patients that have either headaches,</p> <p>20 or neck pain, back pain, or things of that nature.</p> <p>21 Yeah.</p> <p>22 Q. Okay. And --</p> <p>23 A. And, I'm sorry, so the pain medication</p> <p>24 component is where we trained on how to do a spinal</p> <p>25 injections, you know, like epidurals, frequency of</p>	<p>1 A. Yup.</p> <p>2 Q. Can you explain to the jury what a life care</p> <p>3 planner does?</p> <p>4 A. So like in this case, a life care planner --</p> <p>5 when I can, I examine the patient, I interview the</p> <p>6 patient, I review the medical records, and I make</p> <p>7 recommendations to future care, and the cost</p> <p>8 related to that future care.</p> <p>9 Q. Okay. And are there certain requirements</p> <p>10 that you have to become a certified life care</p> <p>11 planner?</p> <p>12 A. Well, the overwhelming majority of life care</p> <p>13 planners are not doctors. They are -- they can be</p> <p>14 vocational rehab experts, they can be nurses,</p> <p>15 physical therapist, or occupational therapist,</p> <p>16 psychologist.</p> <p>17 So you have to have some form of</p> <p>18 background in the healthcare arena, and then you</p> <p>19 have to complete 80 credit hours. And then --</p> <p>20 that's online. And then 40 credit hours done at a</p> <p>21 life center. And then you sit for an exam and you</p> <p>22 pass.</p> <p>23 Q. Okay. And why is there a need for life care</p> <p>24 planners versus simply asking a doctor who's</p> <p>25 treating a patient what that future care is going</p>

<p style="text-align: right;">Page 82</p> <p>1 to cost them?</p> <p>2 A. So the life care planner, you know, at least</p> <p>3 in my experience of treating conditions like this,</p> <p>4 and we have seen some extents what the outlook is</p> <p>5 for some of these patients. And based on that</p> <p>6 experience, and what we learned in the courses of</p> <p>7 life care planning, and make the recommendations of</p> <p>8 future care.</p> <p>9 Mind you though, being a physical medicine</p> <p>10 and rehab doctor, you know, and pain medicine, I</p> <p>11 didn't necessarily have to be a certified life care</p> <p>12 planner, but that's why I wanted to have that extra</p> <p>13 training.</p> <p>14 Q. Okay. But do you typically see treating</p> <p>15 doctors who are treating a patient actually going</p> <p>16 out and telling their patients what this future</p> <p>17 care if going to cost without being a life care</p> <p>18 planner?</p> <p>19 A. Really rare. I've never seen it.</p> <p>20 Q. Okay. And --</p> <p>21 A. With some exceptions like talking about</p> <p>22 cervical recommendation. I've seen that with an</p> <p>23 associated cost. So but that exception, I don't</p> <p>24 recall seeing any other scenario.</p> <p>25 Q. Okay. So for something 30 or 40 years down</p>	<p style="text-align: right;">Page 84</p> <p>1 (At this time, back on the record.)</p> <p>2 THE VIDEOGRAPHER: We are back on</p> <p>3 the record at 5:17 p.m.</p> <p>4 BY MS. PESCHEL:</p> <p>5 Q. All right. Thank you for taking that short</p> <p>6 break and taking the time to review those records,</p> <p>7 Dr. Miranda.</p> <p>8 A. Yeah. No problem.</p> <p>9 Q. I marked them as Exhibit 7. Have you had</p> <p>10 the opportunity to look through the pages handed to</p> <p>11 you as Exhibit 7?</p> <p>12 A. Yes, ma'am.</p> <p>13 (Exhibit No. 7 was marked for</p> <p>14 identification.)</p> <p>15 BY MS. PESCHEL:</p> <p>16 Q. Okay. And so, when you wrote your report</p> <p>17 and reviewed Ms. Hills' records, you did not have</p> <p>18 the opportunity to review any of her prior records,</p> <p>19 did you?</p> <p>20 A. No. Prior to the fall.</p> <p>21 Q. Prior to the fall. Correct. So your</p> <p>22 opinions at that time were based on just -- they</p> <p>23 were based on your physical examination?</p> <p>24 A. Physical examination, medical records I</p> <p>25 reviewed, and my training, and expertise.</p>
<p style="text-align: right;">Page 83</p> <p>1 the line?</p> <p>2 A. Something like that.</p> <p>3 Q. Okay. And who certifies life care planners?</p> <p>4 A. It's International Commission and Healthcare</p> <p>5 Certification.</p> <p>6 Q. Okay. And what kind of organization is</p> <p>7 that?</p> <p>8 A. It's an organization that basically</p> <p>9 maintains the standards, and publications of the</p> <p>10 standards and articles regarding life care</p> <p>11 planning.</p> <p>12 Q. Where are they out of?</p> <p>13 A. I don't recall that.</p> <p>14 Q. Okay. Earlier you got a lot of questions</p> <p>15 regarding your basis for your opinions as to</p> <p>16 Ms. Hills having posttraumatic headaches, including</p> <p>17 questions regarding her past medical records.</p> <p>18 What I'd like to do is hand you a stack</p> <p>19 of records that I actually received yesterday</p> <p>20 evening. And I would like to go off the record,</p> <p>21 and take a short break, and let you look through</p> <p>22 these, if that's okay.</p> <p>23 THE VIDEOGRAPHER: We are off the</p> <p>24 record 4:52 p.m.</p> <p>25 (At this time, off the record.)</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. And that was her record review of --</p> <p>2 not just got Scott & White records, but also</p> <p>3 chiropractic records and pain management records;</p> <p>4 is that correct?</p> <p>5 A. I reviewed the pain management records as</p> <p>6 well. Yeah. Correct.</p> <p>7 Q. And is it typical or industry standard for a</p> <p>8 life care planner to actually perform a physical</p> <p>9 examination before creating a life care plan?</p> <p>10 A. You don't have to.</p> <p>11 Q. Okay. And what benefit does performing a</p> <p>12 physical examination provide you?</p> <p>13 A. A physical exam can correlate things you</p> <p>14 already suspect from reading the records and</p> <p>15 talking to the patient.</p> <p>16 Q. Okay. And in this case when you reviewed</p> <p>17 Rose's records, and then you performed your</p> <p>18 physical exam, what specific findings from your</p> <p>19 physical exam corroborated her records?</p> <p>20 A. So mostly the tenderness in her neck and the</p> <p>21 limited range of motion of her cervical spine.</p> <p>22 Q. Okay. And you just today had the</p> <p>23 opportunity to review, I want to say, past records</p> <p>24 all the way from around May or June 2016, which</p> <p>25 would be months prior to this incident, and back</p>

<p style="text-align: right;">Page 86</p> <p>1 all the way to -- I want to say they go to 2011 or 2 '12? 3 A. 2008, I believe. 4 Q. 2008? Okay. 5 A. Or something like that. 6 Q. Is that correct? 7 A. I think it's 2008. Yeah. 8 Q. Okay. From your review of those records 9 here today, is there anything in those records that 10 makes you change your opinions? 11 A. No, ma'am. 12 Q. Is there anything in those records that 13 indicates to you that Ms. Hills was having any kind 14 of active treatment for ongoing migraine issues 15 prior to this fall? 16 A. Not that I can think of. 17 Q. Or actually, is there a difference between 18 migraines and posttraumatic headaches? 19 A. Yeah. So the intensity of a posttraumatic 20 headache can be worse. You know, location can be 21 more generalized. The frequency could be more, you 22 know. 23 Q. Okay. And did you see any medications that 24 she was actively taking in that time period prior 25 to this fall back to 2008 that would indicate that</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. What is a herniation? 2 A. So a disc herniation is a displacement of 3 one of the discs of the -- in her case, the 4 cervical spine or the neck. Basically, the 5 structure that moved in relation to where it was 6 originally. It's displaced. 7 Q. Okay. Is it common -- do you see patients 8 in your practice spend thousands of dollars for 9 medication needlessly? 10 A. No. 11 Q. If they're not in pain? 12 MR. PAYNE: Objection. Leading. 13 THE WITNESS: No. They were 14 medications -- in my case, they're in 15 pain. 16 BY MS. PESCHEL: 17 Q. And you probably -- in your practice, do you 18 get a sense if somebody is being honest with you? 19 A. I can. I mean, I'm not perfect obviously. 20 I mean, I take them at face value. 21 Q. Did you feel like when you met with 22 Ms. Hills, and you examined her that she was being 23 truthful? 24 A. Yeah. 25 Q. I want to kind of switch gears a little bit,</p>
<p style="text-align: right;">Page 87</p> <p>1 she was having the same injuries that you found her 2 to be diagnosed with from this fall? 3 A. Not that I can think of. 4 Q. Are the injuries that Ms. Hills sustained 5 after this fall, are those similar to injuries you 6 treat in your practice on a daily basis? 7 A. Yes, ma'am. 8 Q. And is it common for a neck injury to cause 9 a posttraumatic headache? 10 A. It can. Yeah. 11 Q. And it's not necessarily going to be an 12 immediate thing, is it? 13 MR. PAYNE: Objection. Leading. 14 THE WITNESS: Correct. 15 BY MS. PESCHEL: 16 Q. How long can it take for a posttraumatic 17 headache to set in? 18 A. My experience, it could be a week or 19 sometimes more. 20 Q. Okay. Can you explain for the jury, because 21 you talked a little bit about this that she had 22 some disc issues with her spine. What is the disc 23 -- I think you called it a herniation; is that 24 correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 and talk about the database you use when coming up 2 with the numbers in your life care plan. 3 Are you familiar with the methodology 4 typically accepted in the field of life care 5 planning? 6 A. Yes, ma'am. 7 Q. And the methodology that you used to prepare 8 Ms. Hills' life care plan, is that consistent with 9 the methodology you're familiar with? 10 MR. PAYNE: Objection. Leading. 11 THE WITNESS: Yes, ma'am. 12 BY MS. PESCHEL: 13 Q. And what methodology is that? 14 A. The methodology that I use here is the 15 methodology that's used by life care planners. 16 Like I said, when you can you examine the patient, 17 you do a physical exam, I interview the patient, I 18 review the medical records. And then you 19 determine, you know, the future care needs of that 20 patient. And then you calculate the associated 21 costs of that future care. 22 Q. And a life care plan is not necessarily done 23 to anticipate all future needs? 24 A. Correct. This is a minimal care life care. 25 Yeah.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. Okay. On Exhibit 2 -- when we are talking 2 about Exhibit 2, are you familiar with different 3 medical facilities, as you're a medical 4 professional, that charge both professional charges 5 and then they charge separate facility charges? 6 A. Yes. 7 Q. Is that quite common? 8 A. Yes, ma'am. 9 MR. PAYNE: Objection. Leading. 10 BY MS. PESCHEL: 11 Q. So, if I portray to you that Exhibit 2 is 12 just the professional charges -- do you see that 13 there? 14 A. Yes. 15 Q. So when you're being asked questions about 16 the cost of an MRI -- if I portray to you that 17 Baylor Scott & White has facility charges as well, 18 you're not getting the full cost of the MRI just by 19 the professional charges; would that be correct? 20 MR. PAYNE: Objection. Leading. 21 THE WITNESS: Yes. Yeah. That's 22 correct. 23 BY MS. PESCHEL: 24 Q. Okay. Are all the opinions that you gave 25 today within a reasonably degree of medical</p>	<p style="text-align: right;">Page 92</p> <p>1 do you recall that? 2 A. I saw a mention of history of migraines. 3 Yes, sir. 4 Q. Including the date -- and we've already 5 talked about this. She referenced a history of 6 migraine headaches on the date of the event at the 7 Sam's Club; true? 8 A. Yes. 9 Q. Do you know if -- you've said you've now 10 prepared about 250 of these life care plans; right? 11 A. North of that. 12 Q. More than that. Do you know and have you 13 verified if any plaintiff in a personal injury 14 lawsuit has implemented a life care plan that you 15 recommended? 16 A. I don't recall that. 17 Q. Do you know if that's ever been done? 18 A. Not that I recall. 19 Q. Do you know if Ms. Hills has implemented 20 your plan? 21 A. Well, I know she continues to treat 22 recently. But I don't know for certainty if she 23 follows the plan. 24 Q. Well, in fact, you would have seen Ms. Hills 25 on exactly one occasion when you performed the</p>
<p style="text-align: right;">Page 91</p> <p>1 certainty? 2 A. Yes, ma'am. 3 Q. And was your prediction for her future 4 treatment based on your experience, expertise, 5 training, education, and review of the relevant 6 medical literature? 7 A. Yes, ma'am. 8 Q. Is there anything else we haven't asked you 9 that you think is significant? 10 A. Not that I can think of. 11 Q. Okay. 12 MS. PESCHEL: I'll pass the 13 witness. 14 - - - 15 REDIRECT EXAMINATION 16 - - - 17 BY MR. PAYNE: 18 Q. Doctor, you've now at the request of 19 plaintiff's counsel have reviewed at least some of 20 Ms. Hills' medical records predating the event at 21 the Sam's Club; correct? 22 A. Yes, sir. 23 Q. And you saw at least three references to a 24 history of migraine headaches that predate the 25 event at Sam's. Do you -- just generally speaking,</p>	<p style="text-align: right;">Page 93</p> <p>1 physical examination; correct? 2 A. Yes. 3 Q. You did not meet with her again to actually 4 go over your recommendations; true? 5 A. True. 6 Q. I think you said earlier you would assume 7 that her attorneys would share your life care plan 8 with her, but that's all that is is an assumption; 9 true? 10 A. Yeah. I haven't confirmed if they have or 11 not. 12 Q. And so you have not -- just so we are clear: 13 You have not sat down with Ms. Hills and said, 14 these are my recommendations for you in the future; 15 true? 16 A. True. 17 Q. And you don't know if that's ever been done; 18 true? 19 A. By somebody other than me? I don't know 20 that. Yeah. 21 Q. Okay. On the -- do you know -- have you 22 reviewed with any particularity Ms. Hills' past 23 medical charges or what her providers have accepted 24 for her charges? 25 A. I don't recall with exact detail of that.</p>

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<p>1 No.</p> <p>2 Q. All right. So at to what Baylor charged her</p> <p>3 facility fee or otherwise for the MRI, you simply</p> <p>4 don't know; right?</p> <p>5 A. Well, I mean, what you showed me and I do</p> <p>6 have some billing records. But to my recollection</p> <p>7 right now, I can't tell you, you know, item by item</p> <p>8 what they are.</p> <p>9 Q. And so, as far as any of the treatment that</p> <p>10 she's had in the past, what was billed for it, and</p> <p>11 what she -- and what was accepted for it, that was</p> <p>12 not a part of the numbers that you arrived at as</p> <p>13 far as future care; true?</p> <p>14 A. Well, remember though the database assumes</p> <p>15 that, you know, multiple providers are billing in</p> <p>16 that data. But I did not specifically include</p> <p>17 Baylor Scott & White's numbers in my projections.</p> <p>18 Q. Do you consider yourself to be in the best</p> <p>19 place for this case to offer an opinion as to</p> <p>20 causation?</p> <p>21 A. I feel good enough to make that</p> <p>22 recommendation. Yes, sir.</p> <p>23 Q. And that's based on a review of medical</p> <p>24 records that postdate the accident, up until 30</p> <p>25 minutes ago, and at most, a one-hour physical</p>	<p>1 Q. Why did you move to Texas from Florida?</p> <p>2 A. So I lived in Florida for several years.</p> <p>3 You know, I moved to Miami, Gainesville,</p> <p>4 Jacksonville, and I was waiting for my wife to</p> <p>5 finish her training. And we talked about staying</p> <p>6 in Florida, but together we decided to leave the</p> <p>7 state. We've heard good things about Austin. So</p> <p>8 here we are.</p> <p>9 Q. Is there any other reason?</p> <p>10 A. Not that I can think of.</p> <p>11 Q. Did it have anything to do with some</p> <p>12 allegations about overprescribing pain medication?</p> <p>13 A. No. I did have several lawsuits regarding</p> <p>14 deformation from several pharmacies, and you know,</p> <p>15 it was litigated. One went to trial, and the other</p> <p>16 three settled out of court. And I have attorneys</p> <p>17 for that, if you're interested in talking to them.</p> <p>18 Q. Did that have anything to do with you moving</p> <p>19 your practice from Florida to Texas?</p> <p>20 A. It wasn't a pleasant experience, you know,</p> <p>21 but I have family in Florida. And the town where</p> <p>22 that occurred was in Lake City, Florida in</p> <p>23 Gainesville. I have family in Orlando so I had, you</p> <p>24 know, some ties. And we still go to Florida quite</p> <p>25 often. We have family there, you know. But at the</p>
Page 95	Page 97
<p>1 examination of the plaintiff; true?</p> <p>2 A. And also my experience and training. Yes,</p> <p>3 sir.</p> <p>4 Q. Do you think Ms. Hills' treating doctors</p> <p>5 would be in a better position to offer an opinion</p> <p>6 as to causation?</p> <p>7 A. I mean, I don't feel in this particular</p> <p>8 case. I mean, they also agree with diagnosis of</p> <p>9 posttraumatic headaches, by the way.</p> <p>10 Q. And again, we've talked about that. And</p> <p>11 their basis and your basis of posttraumatic</p> <p>12 headaches is based on what she told you and them</p> <p>13 only; true?</p> <p>14 A. True.</p> <p>15 Q. And you do not intend to be the physician --</p> <p>16 you've recommended, in the alternative, these nerve</p> <p>17 blocks; true?</p> <p>18 A. I'm sorry? What?</p> <p>19 Q. You have offered, in the alternative, that</p> <p>20 Ms. Hills undergo these nerve blocks; true?</p> <p>21 A. That's the other more -- less conservative</p> <p>22 life care plan. Yes.</p> <p>23 Q. And is it your intention that you would be</p> <p>24 the physician to perform those?</p> <p>25 A. Nope.</p>	<p>1 end of the day, we just decided to leave.</p> <p>2 Q. Do you have hospital privileges at the</p> <p>3 Baylor facilities? Baylor Scott & White</p> <p>4 facilities?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you have hospital privileges at the St.</p> <p>7 David facilities?</p> <p>8 A. No.</p> <p>9 Q. What about the Seton, which I guess is</p> <p>10 now --</p> <p>11 A. Ascension?</p> <p>12 Q. Yeah.</p> <p>13 A. No.</p> <p>14 Q. Do you have hospital privileges with</p> <p>15 Ascension?</p> <p>16 A. No, sir.</p> <p>17 Q. Is it fair to say you do not consider</p> <p>18 yourself an expert in finance, accounting, or</p> <p>19 economics; true?</p> <p>20 A. True.</p> <p>21 Q. Okay.</p> <p>22 MR. PAYNE: Doctor, again, I thank</p> <p>23 you for your time. That's all I have.</p> <p>24 I pass the witness.</p> <p>25 THE WITNESS: Thank you.</p>

Page 98	Page 100
1 MS. PESCHEL: And I promise I'll be	1 WITNESS CORRECTIONS AND SIGNATURE
2 quick.	2
3 MR. PAYNE: Ut-oh.	3 Please indicate changes on this sheet of
4 MS. PESCHEL: I have one follow-up.	4 paper, giving the change, page number, line
5 THE WITNESS: Don't get up out of	5 number and reason for the change. Please sign
6 the chair.	6 each page of changes.
7 MS. PESCHEL: I know. I'm sorry.	7 PAGE/LINE CORRECTION REASON FOR CHANGE
8 - - -	8
9 RECROSS-EXAMINATION	9
10 - - -	10
11 BY MS. PESCHEL:	11
12 Q. So earlier you testified that when you used	12
13 the Fairhealth database to determine future costs,	13
14 it's not predicated on your insurance reimbursement	14
15 rates; correct?	15
16 A. Yes.	16
17 Q. And if you were to utilize the database that	17
18 was predicated on insurance reimbursement rates,	18
19 would that be proper methodology for a life care	19
20 planner?	20
21 A. No.	21
22 Q. Why not?	22
23 A. We don't use any collateral source when we	23
24 do our costing analysis. It's part of the	24
25 standards of life care planning.	25
Page 99	Page 101
1 Q. Okay.	1
2 MS. PESCHEL: That is my last	2
3 question, so I will reserve.	3
4 MR. PAYNE: All right. This	4
5 doesn't have to be on the -- it really	5 HECTOR MIRANDA-GRAJALES, M.D.
6 doesn't have to be on either record. So	6
7 we can go off.	7 I, HECTOR MIRANDA-GRAJALES, M.D., have read the
8 THE VIDEOGRAPHER: Okay. This --	8 foregoing transcript and hereby affix my
9 we are off the record at 5:34 p.m.	9 signature that same is true and correct,
10 - - -	10 except as noted on the previous page(s), and
11 (Whereupon, the videotape	11 that I am signing this before a Notary Public.
12 deposition of HECTOR MIRANDA-GRAJALES,	12
13 M.D. concluded at 5:34 p.m.)	13 HECTOR MIRANDA-GRAJALES, M.D.
14	14 State of Texas)
15	15 County of _____)
16	16
17	17 Before me, _____, on this day
18	18 personally appeared HECTOR MIRANDA-GRAJALES,
19	19 M.D., known to me or proved to me under oath
20	20 or through _____
21	21 (description of identification card or other
22	22 document), to be the person whose name is
23	23 subscribed to the foregoing instrument and
24	24 acknowledge to me that they executed the same
25	25 for the purposes and consideration

<div>Page 102</div> <div>1 therein expressed.</div> <div>2 Given under my hand and seal of office on</div> <div>3 this, the ____ day of _____, 2020.</div> <div>4 _____</div> <div>5 Notary Public for and in</div> <div>6 The State of Texas</div> <div>7 Commission Expires _____</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	
<div>Page 103</div> <div>1 REPORTER'S CERTIFICATION</div> <div>2 TO THE VIDEOTAPE DEPOSITION OF</div> <div>3 HECTOR MIRANDA-GRAJALES, M.D.</div> <div>4 TAKEN ON JANUARY 16, 2020</div> <div>5</div> <div>6 I, Noelle R. Nevius, a Notary in and</div> <div>7 for the State of Texas, hereby certify that</div> <div>8 this deposition transcript is a true record of</div> <div>9 the videotape testimony given by the witness</div> <div>10 name herein, after said witness was duly</div> <div>11 sworn/affirmed by me.</div> <div>12 I further certify that I am neither</div> <div>13 attorney nor counsel for, related to, nor</div> <div>14 employed by any of the parties to the action</div> <div>15 in which this testimony was taken. Further, I</div> <div>16 am not a relative or employee of any attorney</div> <div>17 of record in this cause, nor do I have a</div> <div>18 financial interest in the action.</div> <div>19 The original videotape deposition</div> <div>20 transcript was delivered to the attorney party</div> <div>21 who asked the first question appearing in the</div> <div>22 transcript on January 16, 2020. Brett Payne</div> <div>23 was the attorney present at the time of taking</div> <div>24 this videotape deposition.</div> <div>25 _____</div> <div>26 Noelle R. Nevius</div> <div>27 Notary in and for</div> <div>28 The State of Texas</div>	